



DEPARTMENT OF THE NAVY

COMMANDER NAVAL RESERVE FORCE
NEW ORLEANS, LOUISIANA 70146-5000

COMNAVRESFOR P1600.2A
N003

31 JUL 1996

COMNAVRESFOR P1600.2A

Subj: LEGAL GUIDE FOR COMMANDING OFFICERS (COs)

1. Purpose. To issue the Legal Guide for COs. This publication is designated as a legal and disciplinary guide for COs with Naval Reserve personnel assigned.

2. Cancellation. COMNAVRESFOR P1600.2

3. Discussion

a. This publication contains major revisions and additions, including new chapters, and should be read in its entirety.

b. It is the policy of Commander, Naval Reserve Force (COMNAVRESFOR), to administer discipline within the -Naval Reserve in a manner consistent with present authorities governing the active Navy, making only such modifications as may be necessary to address specific jurisdictional issues.

4. Information. Questions regarding this publication should be referred to COMNAVRESFOR (N003), DSN 678-5303, commercial (504) 678-5303.

5. Forms. The following are forms mentioned within this publication. Order these forms through your normal supply channels using the NAVSUP P2002D

- a. NAVPERS 1070/607, Court Memorandum, S/N 0106-LF-010-6961
- b. NAVPERS 1070/609, Record of Performance, S/N 0106-LF-010-6971
- c. NAVPERS 1070/613, Administrative Remarks, S/N 0106-LF-010-6991
- d. NAVPERS 1626/7, Report and Disposition of Offenses, S/N 0106-LF-000-2700

A handwritten signature in black ink, reading "T.F. Hall", is positioned above the typed name and title.

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Rear Admiral, U. S. Navy

Distribution: (COMNAVRESFORINST 5218.2)
Lists A through F
Naval Justice School

COMNAVRESFOR P1600.2A

31 JUL 1996

CROSS-REFERENCE (LOCATOR) SHEET

CNAVRES 5215/4 (3-76)

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NAVRES 5215/3 (REV. 2-86)

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CHAPTER I

OBTAINING LEGAL ADVICE

0101. Policy. Provision of legal services, including personal and government representation, claims, legal assistance, and command services is the primary responsibility of the servicing Naval Legal Service Office (NLSO) or Trial Services Branch Office (TSO). Any decision to use Selected Reserve (SELRES) or Individual Ready Reserve (IRR) (including Voluntary Training Unit (VTU)) Judge Advocates to provide such services shall be made by the CO of the servicing NLSO or TSO, as appropriate. Naval Reserve Readiness command (REDCOM) Staff Judge Advocates (SJAs) shall coordinate and maintain a liaison with the servicing NLSO or TSO to carry out this policy. They shall act as the initial contact for the NLSO and TSO by a command or individual seeking legal services. Requests for legal services by COs and members shall be made at the level most local to the command; i.e., the Reserve center legal advisor or the REDCOM SJA if no legal advisor has been appointed. Commander, Naval Air Reserve Force (COMNAVAIRESFOR) commands should contact the Commander, Naval Reserve Force Judge Advocate (FJA) for the assignment of legal services near the requesting commands.

0102. Force Judge Advocates. The COMNAVRESFOR Judge Advocate (N003) is primarily responsible for the coordination and supervision of legal services provided within COMNAVRESFOR claimancy and is the principal legal advisor to COMNAVRESFOR and COMNAVRESFOR. The FJA for Commander, Naval Surface Reserve Force (COMNAVSURFRESFOR) (NOOJ) is the principal legal advisor to COMNAVSURFRESFOR.

0103. Staff Judge Advocates. Legal services are primarily available through the SJAs assigned to each REDCOM. All requests for legal services should be made through the appropriate REDCOM SJA. The SJA acts for the servicing NLSO or TSO and coordinates these services with the FJAs when necessary. An SJA may assign individual judge advocates as legal advisors to Reserve centers, readiness centers and other commands within their REDCOMS.

0104. Naval Legal Service Offices (NLSO). Many and varied legal services are available from the NLSOs, their detachments and branch offices. However, these services should only be used after consulting with the SJA of the appropriate REDCOM.

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CHAPTER II

ADMINISTRATION OF DISCIPLINE

0201. Introduction. Authority for administration of discipline is derived from Article I, Section 8, of the United States Constitution which empowers the Congress to "make Rules for the Government and Regulation of the land and naval Forces." Under that authority, Congress enacted the Uniform Code of Military Justice (UCMJ) to provide for the trial and disposition of major criminal offenses and minor disciplinary infractions. The Manual for Courts-Martial (MCM), 1984, as amended, and the Manual of the Judge Advocate General (JAGMAN) (JAGINST 5800.7C) implement and supplement the UCMJ and serve as the basic sources for the CO in administering discipline. The CO should refer to the foregoing references and consult early and regularly with a Navy judge advocate for guidance.

0202. Limitations On Military Jurisdiction Over Reservists

a. In General. The UCMJ was amended in 1986, expanding jurisdiction over Reserve members. (See appendix A of this publication for a summary of jurisdiction over Reserve members.) Key provisions are as follows:

(1) Article 2(a) (1) provides that persons lawfully called or ordered to duty or training in the armed forces are subject to the UCMJ from the date when they are required by the terms of the call or order to obey it (Annual Training (AT), Additional Duty Training (ADT), Active Duty for Special Work (ADSW));

(2) article 2(a) (3) provides that Reservists while performing Inactive Duty Training (IDT) are subject to the UCMJ (IDT);

(3) articles 2(d) (1) and (2) provide that a Reservist who is not on active duty and who is made the subject of proceedings under article 15. Nonjudicial Punishment (NJP), or article 30 (Preferral of charges to court-martial), with respect to an offense against the UCMJ may be ordered to active duty involuntarily for the purpose of investigation under article 32, UCMJ, trial by court-martial, or NJP; and,

(4) article 3(d) provides that the end of an active duty or IDT period does NOT relieve a Reservist from amenability to UCMJ jurisdiction for an offense committed during an active duty or IDT period.

b. Determining Jurisdiction over Reservists(1) Personal Jurisdiction

(a) Active duty. Reservists called or ordered to active duty become subject to UCMJ jurisdiction as of the date they are required by the terms of their orders to obey the call or order to active duty. This has been interpreted to mean 1 minute after midnight of the reporting date specified in the orders. United States v. Cline, 29 M.J. 83 (CMA 1989). The issue of whether and when jurisdiction attaches, where orders are not received, or are received late, has not been resolved. It is imperative, therefore, that some form of acknowledgment is received from the Reservist. The Reservist remains subject to the UCMJ until officially detached from the order or call to duty.

(b) IDT. Reservists while performing IDT are subject to the UCMJ for offenses committed during such training; however, Reservists are not subject to UCMJ jurisdiction for offenses committed before mustering, between IDT periods, or after mustering out of IDT; i.e., overnight between mustering out and in.

(c) Release from Duty. If a Reservist commits an offense under the UCMJ while on active duty or performing IDT, the military retains jurisdiction under the UCMJ to prosecute that Reservist for the offense even after the

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period of active duty or IDT, during which the offense was committed, has expired. A Reservist who reenlists prior to the expiration of an existing enlistment remains subject to the UCMJ for offenses committed during the prior enlistment. However, if a Reservist is discharged following a term of enlistment, then UCMJ jurisdiction over that Reservist terminates as to offenses which that Reservist committed during the term of enlistment (even if the Reservist immediately reenlists), unless (1) the offense is punishable, under the UCMJ, by confinement for at least 5 years and the Reservist cannot be tried for the offense in a civilian court; (2) the Reservist obtained the discharge fraudulently; or (3) the Reservist was a deserter during a prior enlistment.

(2) Jurisdiction over the Offense

(a) Active Duty. Reservists on active duty, like other naval members on active duty, are subject to the UCMJ regardless of whether the offense was committed on-base or off base, on-duty or off-duty. This resulted from a 1987 Supreme Court case, Solorio v. United States, 483 U.U. 485; which did away with a "service-connection" test for establishing jurisdiction over a servicemember's offense. After Solorio, jurisdiction over an offense was based on the military status of the accused, not on the circumstances of the offense. Jurisdiction is established by the enlistment contract or commissioning document of the accused or, in the case of the Reservist on active duty, by the call or order to duty.

(b) Inactive Duty. Reservists committing offenses while not on active duty or IDT do remain subject to criminal prosecution by state or federal civil authorities. Though this misconduct may not be subject to the UCMJ for disciplinary action, it is subject to administrative action, including separation processing.

(c) Urinalysis. Reservists testing positive for controlled substances while on IDT, or shortly after entry onto active duty, although in a duty status and subject to the UCMJ during periods of AT, ADT or IDT, are considered not to be subject to the UCMJ for disciplinary action, without any other corroborating evidence of drug use. The urinalysis test identifies a metabolize of a drug, not the drug itself. Therefore, the wrongful drug use, which is the actual offense, could have occurred at a time when the Reservist was not subject to the UCMJ. The evidence must show that the accused was subject to the UCMJ at the time of the wrongful conduct. Only one case, United States v. Chodara, 29 M.J. 943 (ACMR 1990), has addressed this issue.

1. In Chodara, a Reservist's urine sample tested positive for the cocaine metabolize less than 36 hours after he had entered active duty was considered insufficient to establish wrongful use of cocaine under the UCMJ. Creatively charging the Reservist with possession would not work in this case because the person effectively possesses the metabolize, not the controlled substance. Moreover, charging possession is not within the intent of the urinalysis program. A charge of incapacitation for duty, another creative charge, would require separate evidence that the accused was incapacitated.

2. However, though a commander may not be able to successfully prosecute a Reservist who tests positive for unlawful drug usage while in IDT status, or shortly after entry on active duty, because of the inability to prove that the usage occurred while the Reservist was subject to the UCMJ, there is another remedy available. The commander must process such Reservist, whether officer or enlisted, for administrative separation by reason of misconduct due to drug usage. See MILPERSMAN 3630620 and OPNAVINST 5350.4B, enclosure (7), appendix C (enlisted separations), and SECNAVINST 1920.6A (officer separations) for guidance.

c. Holdover in Current Status

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(1) Active Duty. An inactive duty Reservist on active duty (including AT or ADT) may be retained on active duty if the Reservist committed an offense while in that status and the command has taken action towards court-martial, BUT a Reservist may not be held over for NJP (JAGMAN 0134a).

(2) IDT. An inactive duty Reservist while performing IDT may be retained in that status for a maximum period of 2 working days past the IDT period if there is probable cause to believe that the Reservist committed an offense punishable by death or more than 10 years confinement. Approval must be obtained to keep the member in that status before the IDT period expires from the appropriate Reserve Force *commander*, area coordinator or any active duty General Court-Martial Convening Authority (GCMCA) superior in grade to the requesting officer. Immediate action must be taken to order the member to active duty for trial by court-martial (JAGMAN 0134b).

(3) Pretrial Confinement. Reservists performing IDT may be placed in pretrial confinement as circumstances of the offense warrant; however, an order to active duty must be approved by the Assistant Secretary of the Navy (Manpower and Reserve Affairs) (ASN (M&RA)) within 2 full working days past the end of the IDT period (JAGMAN 0134b(2)).

(4) Release from Holdover. A Reservist held over on IDT and ordered to active duty for the purpose of a trial must be released by the close of business 1 full working day after completion of disciplinary proceedings, unless the Reservist was ordered to active duty with Secretarial approval, in which case the Reservist may be retained on active duty to serve confinement or other restraint punishments (JAGMAN 0123f).

d. Requests for Involuntary Recall. MILPERSMAN 3420320 and JAGMAN 0123e issue procedures and restrictions on recall of inactive duty Reservists for disciplinary action.

(1) Only officers exercising Special Court-Martial Convening Authority (SPCMCA) may submit a request for an order to involuntary active duty of an inactive duty Reservist for disciplinary action. The submitting command may be the accused's Reserve command or unit, or the active-duty command or activity with a judge advocate assigned at which the accused was assigned or present at the time of commission of the offense. In either event, prior consultation with a judge advocate is required. In addition, consultation with the REDCOM SJA is strongly encouraged prior to submitting a request. The FJA should also be informed in each case.

(2) The request should be addressed to the GCMCA in the chain of command of the accused at the time of its submission and who is superior in grade to the submitting officer, generally COMNAVSURFRESFOR or COMNAVAIRESFOR. If confinement or restriction authority is requested, the ASN (M&RA) must approve the request.

(3) The request shall contain the following:

(a) Complete identity of the accused (grade, full name, social security number, designator);

(b) detailed summary of the contemplated charges and specifications or a copy of the charge sheet, if available (avoid triggering speedy trial provisions of R.C.M. 707, MCM, 1984; i.e., do not prefer charges);

(c) summary of evidence in the case;

(d) facts showing amenability to trial by courts-martial or imposition of NJP (facts showing accused was subject to UCMJ at time offenses committed);

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(e) military status, unit to which assigned and location, and home address of the accused at the time of submission and at the time of the commission of the alleged offense;

(f) where the accused should be ordered to active duty and why, in the opinion of the requester; and,

(g) whether the accused is in pretrial confinement, whether the accused will be placed in pretrial confinement upon being ordered to active duty, and, if appropriate, whether confinement as a punishment should be authorized and ASN (M&RA) approval obtained.

(4) Delivery of Orders. Involuntary recall orders shall be delivered in person; by telephone, followed by mailing orders by certified mail, or by certified mail return receipt requested without prior telephone notice; generally allowing 30 calendar days before the reporting date. COMNAVRESFOR, COMNAVAIRESFOR, or COMNAVSURFRESFOR may issue the orders.

NOTE: These procedures are general guidelines and are not intended to confer a legal right or benefit upon the member to whom the orders are directed.

0203. Administrative And Disciplinary Measures

a. Nonpunitive Measures. COs and Officers in Charge (OIC) are authorized and expected to use administrative corrective measures to promote efficiency and good order and discipline. They generally fall into three areas: Extra Military Instruction (EMI), administrative withholding of privileges, and nonpunitive censure. These measures are not punishment for military offenses, may be oral or written, and may be used for acts and omissions which are or are not offenses under the UCMJ (R.C.M. 306 and part V, paragraph 1g, MCM, 1984: JAGMAN 0102).

(1) EMI. EMI is instruction in a phase of military duty in which an individual is deficient, and is intended to correct that deficiency. EMI is a bonafide training technique to improve efficiency, but it is not to be used as a substitute for disciplinary action (JAGMAN 0103).

(a) The instruction must be logically related to the deficiency for which it was assigned and should not exceed 2 hours per day.

(b) EMI shall not be conducted over a period longer than necessary to correct the performance deficiency, should not be conducted on the member's Sabbath, and will not be used to deprive a member of normal liberty to which the member is otherwise entitled.

(c) EMI may be conducted at a reasonable time outside normal working hours, but Reservists may not be required to perform EMI outside normal IDT periods.

1. "Outside normal IDT periods" are those days in which a Reservist is not normally required to report to the training site for IDT. For example, if a unit normally trains on the first weekend of the month, a member from that unit shall not be required to report on successive weekends (i.e., second, third) to perform the EMI.

2. To maintain jurisdiction, a Reservist performing EMI should either be required to report early for the first IDT period or not be released from the second IDT period until after the EMI has been completed. The time limitations in paragraph 0103a(1) (a) shall not be exceeded.

(2) Administrative Withholding of Privileges. Privileges that may be temporarily withheld include special liberty, exchange of duty, special command programs, access to base or ship libraries, base or ship movies, enlisted or officers' clubs, commissary and exchange privileges, base parking, and base or

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ship Morale, Welfare and Recreation (MwR) events. Deprivation of normal liberty as a punishment except as authorized under the UCMJ is illegal. Deprivation of normal liberty may result from other lawful actions such as authorized pretrial restraint, deprivation of liberty in a foreign port when essential to foreign relations of the United States, and the performance of work outside normal duty hours to complete assignments which are essential to operational readiness (JAGMAN 0104). The person authorized to withhold a privilege is the same person that is authorized to grant the privilege.

(3) Nonpunitive Censure. Nonpunitive censure is a military superior's criticism of a subordinate's conduct or performance of duty. This criticism may be oral or written. When oral, it often is referred to as a "chewing out;" when written, the letter is styled a "nonpunitive letter of caution." (JAGMAN 0105, R.C.M. 306(c)(2), MCM, 1984). A sample nonpunitive letter of caution is in JAGMAN, appendix A-1-a.

(a) Such letters are private in nature, and copies may not be forwarded to the Chief of Naval Personnel or quoted in or appended to fitness reports or evaluations, included as enclosures to JAGMAN or other investigative reports, or otherwise included in the official departmental records of the recipient. A nonpunitive letter may be included in correspondence forwarding a member's rebuttal to detachment for cause proceedings, or relief of command, or a negative endorsement thereto, if the member alleges inadequate counseling or a failure to warn of deficiencies.

(b) A deficient performance of duty or other facts which led to a letter of caution being issued can be mentioned in the recipient's next fitness report or enlisted evaluation. In this regard, the requirements of the JAGMAN are met by avoiding any reference to the fact that a nonpunitive letter of caution was issued.

b. NJP. NJP is a disciplinary procedure authorized under article 15, UCMJ, known as "Captain's Mast" in the Navy and "Office Hours" in the Marine Corps. NJP is an effective and prompt means of maintaining good order and discipline and promoting positive behavior changes without the stigma of a court-martial conviction. At NJP the CO may inquire into allegations of minor offenses against a member of the command, afford the accused a hearing, and dispose of charges by dismissing them with or without a warning, imposing punishment, or referring a case to a court-martial. Normally, a minor offense is an offense for which the maximum punishment would not include a dishonorable discharge or confinement longer than 1 year if tried by General Court-Martial (GCM), but the determination of what is a minor offense is a matter within the CO's judgment (UCMJ, article 15; part V, MCM, 1984; JAGMAN, chapter I, part B).

c. Court-Martial. When an offense is committed during an active duty or IDT period which the CO feels is of such seriousness it should be referred to a court-martial, and pretrial confinement is warranted, they should continue the accused on duty. See paragraph 0102 above. However, prior to any such action, it is strongly recommended that the CO seek the advice of the command legal advisor or SJA.

d. Convening Authorities. See appendix B of this publication for a listing of CAs in the Naval Reserve

CHAPTER III

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GUIDELINES FOR CONDUCTING NONJUDICIAL PUNISHMENT

0301. Introduction. While the use of administrative corrective measures are encouraged, COs will often find it necessary to consider NJP as a means of maintaining good order and discipline in the command. NJP is appropriate when administrative corrective measures are inadequate because of the nature of the offense or the record of the servicemember, unless it is clear that only trial by court-martial will meet the needs of justice and discipline. NJP is not a criminal trial, imposition of punishment is not a conviction, and a decision not to impose punishment is not an acquittal. The decision to impose NJP and the nature of punishment awarded is a matter solely within the discretion of the CO. No superior may direct a subordinate to impose a particular form of NJP or issue regulations, orders, or "guides" which suggest the appropriate disposition of particular offenses.

a. Authority. Any commander or CO, including COs of SELRES or VTU units, may impose NJP upon officers and enlisted persons of the command (MILPERSMAN 3420320.2b; JAGMAN 0106a). Any commissioned officer designated as an OIC by competent authority may only impose NJP upon enlisted personnel assigned to the unit (JAGMAN 0106b). The authority to impose NJP may not be delegated, except that a flag or general officer in command may delegate article 15 authority to a principal assistant with the express prior approval of BUPERS (JAGMAN 0106C). Commanders superior in the chain of command may not limit the authority of a subordinate to impose NJP, unless such limitation is approved by SECNAV (JAGMAN 0106e; part V, MCM, 1984).

b. Jurisdiction. When NJP is imposed, the accused must be assigned or attached to the command or unit of the officer imposing punishment. A person performing temporary additional duty may be assigned or attached to two units or commands at the same time and subject to two NJP authorities. When the accused is no longer a member of the command, the alleged offense and investigation report should be forwarded to competent authority in the chain of command over the accused (JAGMAN 0107; UCMJ, article 15). A CO who believes their article 15 punishment authority is insufficient for appropriate disposition of a case may refer the case to a superior commander.

c. Limitations. A CO or OIC of a unit attached to a Navy ship for duty should, as a matter of policy, refrain from exercising NJP power, and all such matters should be referred to the CO of the ship. The CO of the ship may permit the unit CO to exercise NJP authority, but this is a matter solely within their personal discretion. This policy does not apply to units which are embarked for transportation only. An accused who is attached or embarked in a vessel does not have the right to demand trial by court-martial in lieu of NJP. NJP may not be imposed more than 2 years after the date of the offense (JAGMAN 0108; paragraph 1f(4), part V, MCM, 1984).

d. A CO contemplating NJP over a Reservist who has committed an offense while subject to the UCMJ may impose NJP at the following times:

- (1) The active duty or IDT period when the misconduct occurred;
- (2) the accused's next active duty or IDT period;
- (3) the CO's next duty period after the accused's active duty or IDT has ended, if the accused has waived the right to be present at the NJP hearing; or
- (4) after being recalled to active duty for disciplinary action.

e. Both the CO and the member must be subject to the UCMJ at the time of imposition except in the case of a waiver by the member, in which case only the CO need be subject to the UCMJ.

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0302. Premast Procedures

a. Preliminary inquiry. Upon receipt of information of a suspected offense, the CO of the accused should promptly determine appropriate disposition. For purely military offenses or minor offenses, the CO should designate a qualified, unbiased, detached officer or chief petty officer senior to the accused to conduct a preliminary inquiry. A JAGMAN investigation will not be convened purely for disciplinary action (R.C.M. 301, 303, 401, MCM, 1984; JAGMAN 0202b).

(1) The preliminary inquiry usually is conducted informally. All available evidence regarding guilt or innocence and extenuation and mitigation of the offenses should be gathered. Signed, preferably sworn, statements from all available witnesses, any real or documentary evidence regarding the offenses, accurate completion of NAVPERS 1626/7 (Report and Disposition of Offenses), and statement with article 31 rights from the accused should be made part of the preliminary inquiry (R.C.M. 303, MCM, 1984).

(2) The Naval Criminal Investigative Service is the Navy's primary investigative agency and must be contacted regarding major criminal offenses, i.e., offenses punishable by more than 1 year's confinement, including the following:

- (a) Sabotage, espionage, subversive activities or defection;
- (b) loss, compromise, leakage, disclosure of classified material;
- (c) ordnance incidents;
- (d) sexual perversion offenses, excluding homosexual matters, unless criminal;
- (e) arson or other willful destruction of government property;
- (f) narcotics, dangerous drugs or controlled substance cases (Note: Normal Naval Criminal Investigative Service policy is to decline cases involving small amounts);
- (g) thefts of personal property when ordnance, contraband, or controlled substances are involved, where thefts aggregate \$500 or more, or a series of unresolved personal property thefts are involved;
- (h) death of military personnel, family members, Navy employees on Navy or Marine Corps property, when criminal cause cannot be excluded; and
- (i) fire or explosion of questionable origin (SECNAVINST 5520.3A refers).

b. Notice. If, after a preliminary inquiry, the CO determines that disposition by NJP proceedings is appropriate, the CO shall cause the accused to be notified (JAGMAN 0109). The status of the accused and the potential use of the record should be considered in determining what notification of rights form is used:

(1) JAGMAN Appendix A-1-b. Applies only in circumstances when the accused is attached to or embarked in a vessel. The record of NJP can be used in aggravation in the event of a later court-martial conviction for other offenses;

(2) JAGMAN Appendix A-1-c. When the CO does not intend NJP to be used in aggravation at a later court-martial or if a personal representative, civilian or military lawyer, was present at mast, in which case the record of NJP may be used in aggravation; or

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(3) JAGMAN Appendix A-1-d. When the CO intends to use the record of NJP in aggravation at a later court-martial (R.C.M. 1001(b) (2), MCM, 1984; JAGMAN 0141).

c. Legal Rights. An accused can refuse NJP prior to imposition of punishment, except when attached to or embarked on a vessel (JAGMAN 0109a; UCMJ, article 15(a)).

NOTE: An accused does not have a right to consult with counsel before an NJP, but COs are encouraged to permit an accused to consult with a military counsel, subject to availability, delay and operational commitments or military exigencies. Failure to provide the opportunity to consult with counsel does not preclude NJP, but precludes use of the NJP result in aggravation at a later court-martial. Telephone communication with a military lawyer satisfies the advice requirement. An Administrative Remarks (NAVPERS 1070/613) (page 13) should document that the accused spoke to military counsel.

0303. Procedures For NJP

a. Personal Appearance Requested. Under part V, MCM, 1984, the accused may request a personal appearance before the CO or waive that right. If personal appearance is requested, the guide issued in the JAGMAN appendix A-1-e should be used, but is not mandatory. COs should afford the accused the following procedural rights in the case of a personal appearance at NJP:

(1) UCMJ, Article 31 Rights. The CO shall inform the accused of their rights under UCMJ, article 31(b);

(2) limited representation. A spokesperson, provided or arranged for by the accused, shall not be entitled to travel or other expenses. Proceedings need not be delayed to permit their presence, and they may speak for the accused but not question witnesses, except at the NJP authority's discretion. The spokesperson may, but need not be a lawyer;

(3) offenses charged. The accused will be informed orally or in writing of information against them relating to the offenses alleged;

(4) access to evidence. The accused shall be allowed to examine documents or physical objects relating to the case which the NJP authority has considered, and on which the authority intends to rely, when deciding whether and how much punishment to impose;

(5) matters in defense. The accused may present matters in defense, extenuation, and mitigation orally and/or in writing.

(6) Witnesses. The accused may have witnesses present at the hearing, if their statements will be relevant and they are reasonably available. A witness is not reasonably available if: The witness requires reimbursement by the United States for any costs of appearing; cannot appear without unduly delaying the proceedings; or, if a military witness, cannot be excused from other important duties;

(7) right to public hearing. The proceeding shall be open to the public, if requested by the accused, unless the NJP authority determines that the proceedings should be closed for good cause. Military exigencies or security interests may constitute good cause. The alleged offender may be permitted to confer privately with the NJP authority on matters of a personal nature even if the hearing has been declared "open to the public."

b. Procedure Where Personal Appearance Waived. If the right to appear personally at mast is waived, the accused may submit written matters to the NJP authority to consider in deciding whether to impose punishment. The accused shall be informed of the right to remain silent and that any matters submitted

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could be used in a trial by court-martial. Although no hearing is required, the NJP authority may require the accused to be present for their action.

c. Evidence. Military Rules of Evidence (other than privileged communications) do not apply at NJP proceedings. As long as procedural requirements are met, the NJP authority may consider any relevant matters.

d. Standard of Proof. Proof by which facts must be established at mast is by a "preponderance of the evidence, " rather than "beyond a reasonable doubt" as in a court-martial. Preponderance of the evidence means the greater weight of the evidence. If the NJP authority determines that it is more probable than not (i.e., 51 percent) that the accused committed the offense, the test has been satisfied.

e. Decision. After considering all relevant matters, if the NJP authority concludes that the accused has not committed the offenses as alleged, the authority shall so inform the accused and terminate the proceedings. If the NJP authority concludes that the accused committed one or more of the alleged offenses, the authority shall:

- (1) So inform the accused;
- (2) inform the accused of the punishment imposed; and
- (3) inform the accused of the right to appeal.

0304. NJP Punishments

a. Maximum possible punishment depends upon the grade of the officer imposing the punishment, status of the imposing officer (CO/OIC), status of the accused (officer/paygrade of enlisted), and nature of the command (vessel/shore). See appendix C of this publication (paragraph 5, part V, MCM, 1984; UCMJ, article 15(b)I JAGMAN 0111, 0112).

b. Limitations on Reservist on Inactive Duty

(1) Punishment Involving Restraint on Liberty

(a) If imposed on a Reservist performing IDT, restriction may not extend beyond the normal IDT period, but may be carried over to subsequent periods of IDT or a period of active duty. Example: IDT weekends are 15/16 July and 5/6 August. If NJP is imposed on 15 July, an award of 30 calendar days restriction would result in restriction actually in effect during IDT hours on 15/16 July and 5/6 August, but at no other times.

(b) If imposed on a Reservist ordered to active duty for disciplinary action, the period of active duty may not be extended for the purpose of serving any restraint type punishment unless the order to active duty was approved by ASN (M&RA).

(c) Correctional custody, extra duties and arrest in quarters may not be imposed on Reservists performing IDT (JAGMAN 0112).

(2) Punishment Involving Forfeitures

(a) Notwithstanding their duty status at the time of imposition, forfeitures as a result of NJP may be imposed to a maximum of one-half of 1 month's pay for a period of 2 months. The "month's pay" refers to the basic pay authorized for a member on active duty of a corresponding paygrade and years in service.

(b) However, when recovering forfeitures it must be taken into account that the amount of "a month's pay" to which a Reservist becomes entitled may be determined only after the end of the training period. If this

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amount is less than the "month's pay" as defined above, then only one-half of the pay accrued for the training actually performed may be recovered.

(c) Forfeitures may be collected from active duty and IDT pay during subsequent periods of duty. DODPM, part 7, chapters 5 and 6, applies to inactive duty Reservists involuntary recalled to active duty for punishment under UCMJ, article 3(d) and released therefrom before collection of all forfeitures (JAGMAN 0112b).

c. Effective Dates and Execution of Punishments (JAGMAN 0113)

(1) Reduction and Forfeiture of Pay. These punishments, if unsuspended, take effect on the date imposed. If suspended and later vacated, these punishments take effect on the date the suspension is vacated. If, subsequent to imposition of forfeitures and prior to execution, an accused commences an Unauthorized Absence (UA), such period will interrupt the service of this punishment and will be excluded in computing the service of this punishment. If forfeitures are imposed, however, while prior forfeitures are still in effect, the prior punishment will be completed before the latter begins to run. A punishment reduction may be executed in the accused's absence.

(2) Restraint and Extra Duties. These punishments, if unsuspended, take effect when imposed and are executed when served, subject only to the following:

(a) Interruption. If subsequent to the imposition and prior to the execution of these punishments, an accused commences a UA, the period of absence shall interrupt the service of the unexecuted portion of these punishments. Prior NJP punishment involving restraint will normally be interrupted by subsequent punishment involving restraint, except that the CO may order that the earlier punishment be completed prior to the execution of the later punishment. Court-martial sentences will also interrupt the service of NJP involving restraint. When the judicially ordered punishment is completed, any unexecuted NJP will be completed.

(b) Deferment. CO may defer execution of correctional custody or confinement on bread and water or diminished rations when adequate facilities are not available, the exigencies of the service requires it, or the accused is found to be not medically fit, for a reasonable period of time, not to exceed 15 days.

(3) Punitive Letters. This punishment takes effect when imposed. A punitive letter is imposed when delivered to the offender.

d. Nature of Punishments. For a complete description of punishments see paragraph 5c, part V, MCM, 1984; JAGMAN 0111 and 0112.

0305. Suspension, Mitigation, Remission, And Setting Aside

a. Suspension. The CO who imposes NJP, or a successor in command, may, at any time, suspend any part of an unexecuted punishment and may suspend a reduction in grade or forfeiture, whether or not executed, subject to the following:

(1) An executed punishment of reduction or forfeiture of pay may be suspended only within a period of 4 months after the date of execution.

(2) Suspension of a punishment may not be for a period longer than 6 months from the date of the suspension. Expiration of the current enlistment or term of service automatically terminates the period of suspension.

(3) Unless the suspension is sooner vacated, suspended portions of the punishment are remitted, without further action, upon the termination of the period of suspension.

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(4) Unless otherwise stated, an action suspending a punishment includes a condition that the member not violate any punitive article of the UCMJ. The CO may specify in writing additional conditions of the suspension.

(5) A suspension may be vacated by any NJP authority competent to impose punishment upon the offender of the kind and amount involved in the vacation of suspension. vacation of suspension may only be based on an offense under the UCMJ (or a violation of any additional written conditions specified by the CO) committed within the period of suspension. Before a suspension may be vacated the member must be notified and given an opportunity to respond. Although a hearing is not required to vacate a suspension, if the punishment suspended is of the kind below, the member should, unless impracticable, be provided a hearing:

- (a) Arrest in quarters for more than 7 days;
- (b) correctional custody for more than 7 days;
- (c) forfeiture of more than 7 days' pay;
- (d) reduction in grade from E4 or higher;
- (e) extra duties for more than 14 days; or
- (f) restriction for more than 14 days.

The hearing requirement includes the opportunity to appear before the officer authorized to vacate the suspension of punishment to present any matters in defense, extenuation or mitigation of the offense on which the vacation action is to be based. Vacation of a suspended NJP is not itself NJP. Consequently, additional NJP punishment may be imposed for the new offense upon which the vacation action is based (paragraph 6, part V, MCM, 1984).

(6) COs should consider suspending all or part of any punishment selected under article 15, UCMJ, particularly in the case of first offenders or when significant extenuating or mitigating matters are present. suspension provides an incentive to the offender and gives the CO an opportunity to evaluate the offender during the period of suspension (paragraph 1d(3), part V, MCM, 1984).

b. Mitigation. Mitigation is a reduction in the quantity or quality of punishment, its general nature remaining the same. COs who imposed the NJP, or a successor in command, may at any time mitigate any part or amount of the unexecuted portion of the punishment imposed based upon the offender's later good conduct, or when it is determined that the punishment imposed was disproportionate to the offense. COs may also mitigate reduction in grade (whether executed or unexecuted) to forfeiture of pay, but the amount of the forfeiture may not be greater than the amount that could have been imposed by the officer who initially imposed the punishment. Reduction in grade may be mitigated to forfeiture of pay only within 4 months after the date of execution. Arrest in quarters may be mitigated to restriction; confinement on bread and water or diminished rations to correctional custody; correctional custody or confinement on bread and water or diminished rations to extra duties or restriction, or both; and extra duties to restriction. However, the mitigated punishment may not be for a greater period than the punishment mitigated.

c. Remission. Remission is an action whereby any portion of the unexecuted punishment is canceled. COs who impose NJP or the successor in command may, at any time, remit any part or amount of the unexecuted portion of the punishment imposed based upon the offender's later good conduct or a determination that the punishment imposed was disproportionate to the offense.

d. Setting Aside. Setting aside is an action whereby the punishment or any part or amount thereof, whether executed or unexecuted, is set aside and

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any property, privileges, or rights affected by the portion of the punishment set aside are restored. The CO who imposed the punishment or a successor in command has the authority to set aside the punishment, but should do so only when it is believed under all of the circumstances that the punishment has resulted in a clear injustice. Also, the authority to set aside an executed punishment should ordinarily be exercised only within a reasonable time after the punishment has been executed. In the absence of unusual circumstances, 4 months is considered reasonable.

e. New CO. When a person who has received NJP transfers (including temporary additional duty orders) to another command, or returns to the parent command after temporary additional duty elsewhere, the receiving CO (or OIC) and their successor in command may under article 15(d), and the conditions in paragraphs 0205a through d above, exercise the same powers with respect to the punishment imposed as exercised by the previous NJP authority, provided the punishment affected is within the authority of the receiving CO to impose (JAGMAN 0118b).

f. Interruption of Probationary Period. The period of suspension is interrupted by unauthorized and unexcused absence of the probationer or by commencement of proceedings to vacate. After a period of UA, the period of suspension would resume as of the date an absence ended. If proceedings to vacate conclude without vacation of the punishment or only a portion of the punishment vacated, the period of suspension resumes as of the date of the interruption due to initiation of vacation proceedings (JAGMAN 0118c).

g. Vacation of Suspension. The order vacating a suspension must be issued within 10 working days of the commencement of the vacation proceedings. The decision to vacate a suspension of NJP is not appealable (JAGMAN 0118d).

0306. Postmast Procedures

a. Postmast Advice. Immediately following the imposition of NJP, the CO shall advise the member of their appeal rights, and should ensure that they receive, understand, and execute the "Accused's Acknowledgment of Appeal Rights" form (see JAGMAN appendix A-1-f). See section 0207 hereinafter regarding appeal rights procedures.

b. Record of Disposition. Following the NJP hearing, the CO should ensure that all necessary steps are taken to execute punishments which are not suspended. Proper service record entries should be made. See MILPERSMAN 5030320, and MILPERSMAN appendix 50-x-18 for completion requirements. For all Reservists performing IDT or on AT or ADT, the results of NJP proceedings are recorded on a NAVPERS 1070/613 (page 13). For punishments which affect pay (e.g., forfeiture, reduction in grade) a certified copy of the page 13 entry must be forwarded to the Defense Finance and Accounting Service Cleveland Center (Code JYD). NAVPERS 1070/607 (Court Memorandum) (page 7) is not to be used in reporting the results of NJP proceedings for Reservists performing IDT, AT or ADT (PAYPERSMAN article 90436b(8)).

c. As discussed in paragraph 0202b above, the admissibility of the record of NJP at a subsequent court-martial proceeding as evidence in aggravation during the sentencing phase may depend upon the availability to the accused of a lawyer either prior to or during the NJP hearing. Careful preparation of the page 13 entry will preserve the NJP record for such future use.

d. The "Report and Disposition of Offenses," (NAVPERS 1626/7), is designed for recording the disposition of offenses on a form suitable for filing in the unit punishment book (MILPERSMAN 5030500.1 and JAGMAN 0119).

e. Publication of NJP Results. Publication of NJP results is rooted in the reasonable belief that it serves to deter other members from committing similar offenses and that it has salutary effects upon the morale of the command. If the interests of the rehabilitation of the offender, good order,

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high morale, and perceptions of fairness so warrant, COs may publish the results of NJP cases. Announcements may be made by any or all of the following methods:

(1) Plan of the Day Publication. The name, rate, offense(s), and the disposition of the offender may be published in the plan of the day within a period of 1 month of the imposition of NJP, or, if the punishment was appealed, within 1 month of the date the appeal is denied, provided that the plan of the day is disseminated to military personnel only. If disseminated to other than military personnel, NJP results may be published without the name of the offender.

(2) Bulletin Boards. The name, rate, offense(s), and the disposition of the offender may be posted within 1 month of the imposition of NJP, or, if the punishment is appealed, within 1 month of the date the appeal is denied. Such posting may be on command bulletin boards for military personnel only. If bulletin boards are accessible to other than just military personnel, NJP results may be published, but without the name of the offender.

(3) Morning Quarters. The name, rate, offense(s), and the disposition of NJP cases may be announced at morning quarters within 1 month of the imposition of NJP or, if the punishment is appealed, within 1 month of the date the appeal is denied.

0307. Appeals From NJP

a. In General. Any member awarded NJP, who considers the punishment to be unjust or disproportionate to the offense(s) may appeal through the CO to the next superior exercising GCMCA.

b. Who May Act on Appeal. Any appeal from NJP shall, in the absence of specific direction to the contrary by an officer authorized to convene a GCM and superior in the chain of command to the officer who imposed the punishment, be forwarded to the area coordinator or to a subordinate commander authorized to convene a GCM and designated by the area coordinator for this purpose. See OPNAVINST 5400.24D to identify the area coordinator for your command. Also see message 061002Z Apr 95.

c. Format of Appeal. Appeals shall be in writing and must include the appellant's reasons for regarding the punishment as unjust or disproportionate to the offense(s). There are no other bases for an appeal from NJP.

d. Time Limit. An appeal from NJP must be submitted within 5 days of the imposition of the punishment, or the right to appeal shall be waived in the absence of good cause shown. A member who has appealed may be required to undergo any punishment imposed while the appeal is pending, except if the action is not taken on the appeal within 5 days after the appeal is submitted, and if the member so requests, any unexecuted punishment involving restraint or extra duties shall be stayed until action on the appeal is taken.

e. Contents of Forwarding Endorsement. The contents of the forwarding endorsement of the officer who imposed the punishment shall include, as applicable:

(1) Comments on any assertions of fact contained in the letter of appeal which the officer who imposed the punishment considers to be inaccurate or erroneous;

(2) recitation of any facts concerning the offenses which are not otherwise included in the appeal papers. If such information was brought out at the mast, the endorsement should so state, and include any comments in regard thereto made by the appellant during the hearing. Any other adverse factual information in the endorsement, unless it recites matters already issued in official service record entries, should be referred to the appellant

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for comment, if practicable, and the member should be given an opportunity to submit a statement in regard thereto, or state that no statement is desired;

(3) a copy of the completed Report of Disposition of Offenses, NAVPERS 1626/7 (Rev. 12-88), as an enclosure;

(4) copies of all documents and signed statements which were considered as evidence at mast, as enclosures; and

(5) a copy of the appellant's record of performance recorded in the service record, as an enclosure.

f. Legal Review. In acting on an appeal, the reviewing authority is required to refer certain cases to a Navy Judge Advocate for consideration and advice. Thus, where the punishment to be reviewed is of the character described in subparagraphs 0305a(5) (a) through (f) above, the reviewing authority must have the benefit of such legal advice before acting on the appeal. The reviewing authority may refer any NJP appeal to a Navy Judge Advocate regardless of the nature of the punishment. The Navy Judge Advocate may make further inquiries of the officer who imposed punishment and/or the appellant and any witnesses, and examine any additional matter deemed necessary (subparagraph 7e, part V, MCM, 1984). Thus, the officer who imposed punishment should be prepared to respond and/or make arrangements for the appellant and any witnesses to respond to such inquiries as may be forthcoming in the course of the appeal.

g. Action By Reviewing Authority

(1) In General. In acting on an appeal, the reviewing authority may exercise the same powers of suspension, mitigation, remission, and/or setting aside, as the CO. The reviewing authority may take such action even if no appeal has been filed.

(2) Matters Considered. When reviewing the action of an officer who imposed NJP, the reviewing authority may consider the record of proceedings, any matters submitted by the member, any matters considered during the legal review, if any, and any other appropriate matters.

(3) Additional Proceedings. The reviewing authority, in acting on an appeal, may set aside an NJP due to a procedural error that materially prejudiced a substantial right of the member, not amounting to a finding of insufficient evidence to impose NJP. In such a case, the reviewing authority may authorize additional proceedings to be conducted by the officer who imposed the NJP, or their successor in command, for the same offense involved in the original proceedings. If additional proceedings are held, any punishment imposed shall be no more severe than that awarded during the initial proceedings unless other offenses, which occurred subsequent to the date of the initial NJP, are included in the offenses charged and for which punishment is imposed. A member who is not attached to or embarked on a vessel retains the right to demand trial by court-martial as to any added offense which occurred subsequent to the date of the NJP which was set aside (JAGMAN 0117e).

(4) Notification. Upon completion of action by the reviewing authority, the member upon whom punishment was imposed shall be promptly notified of the result.

0308. Appeals From Punitive Censure (JAGMAN 0114g)

a. The following rules apply to appeals of punitive letters (in addition to those rules contained in JAGMAN 0116 and 0117; paragraph 7, part V, MCM, 1984):

(1) A copy of the report of the mast shall be provided to the member upon request except where the interest of national security may be adversely

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affected. A copy shall be made available for use in preparation of a defense or appeal.

(2) In forwarding an appeal from a punitive letter, the officer who issued the letter shall attach to the forwarding endorsement on the appeal, a copy of the punitive letter, and the report of hearing if one was afforded to the appellant. The appeal shall be forwarded via the chain of command to the superior to whom the appeal is made. The superior to whom the appeal is made may direct additional inquiry or investigation into matters raised by the appeal if such action is deemed necessary in the interests of justice.

(3) Appeals from a punitive letter imposed as NJP shall be forwarded as specified in paragraph 0307b above.

(4) Upon determination of the appeal, the superior shall advise the appellant of the action taken via the CO with copies of the action to officers in the chain of command through whom the appeal was forwarded. The superior will also return all papers to the CO who issued the letter.

b. Forwarding Letter to Department. Upon denial of any appeal taken, the lapse of a reasonable time after issuance (see paragraph 0207d above), or upon receipt of a statement that an appeal is not desired, a copy of the punitive letter and other documents as may be required by BUPERS together with the addressee's statement or a written declaration that no statement is desired, shall be forwarded via the chain of command to BUPERS (Pers-82 for officers and Pers-83 for enlisted). If the punitive letter is not sustained on appeal, a copy of the letter shall not be filed in the official record of the member concerned. It is the responsibility of the command issuing a punitive letter to assemble and forward at one time all the foregoing documents and to provide a copy of the forwarding letter for each via addressee.

c. Cancellation. Material properly placed in a member's official record may not normally be removed therefrom or destroyed (JAGMAN 0114i).

(1) If a factual error or other reasons indicates that a punitive letter issued under article 15, UCMJ, and filed in the member's official record results in a clear injustice, the CO who imposed the punishment or successor in command may cancel or direct cancellation of the punitive letter. In such a case, cancellation will be accomplished by issuing a second letter to the member concerned announcing the cancellation of the punitive letter and detailing the reason for cancellation.

(2) If a punitive letter is canceled by superior authority before a copy of the original of such letter has been forwarded to BUPERS, the punitive letter will not be forwarded and copies of the punitive letter will be removed from all files relating to the member and destroyed.

(3) If the cancellation occurs after the copy of the letter has been forwarded, a copy of the letter of cancellation shall be forwarded to BUPERS, and to any other addressees to whom copies of the punitive letter were forwarded. Upon receipt of the copy of the letter of cancellation, addressees will ensure that copies of the punitive letter are not filed in or, if already filed, be removed from the member's official record and destroyed. The letter of cancellation likewise will not be filed in the member's official records.

(4) If the punitive letter is filed inadvertently or by mistake of fact, such document may be removed by BUPERS. In other cases, only SECNAV acting through the Board for Correction of Naval Records (BCNR) may order removal of punitive letters and other documents that are in official records.

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CHAPTER IV

ADMINISTRATIVE SEPARATION PROCEDURES0401. Introduction

a. SECNAVINST 1910.4A implemented DoD Directive 1332.14 of 28 January 1982, regarding Enlisted Administrative Separations. The Naval Military Personnel Manual (MILPERSMAN), chapter 36, also implemented SECNAVINST 1910.4A. These regulations are references for enlisted administrative separations and serve as the basis for this material. BUPERS (Pers-83) is the primary point of contact concerning questions of enlisted performance and separation policy. Telephone numbers are (703) 614-8222 for information and (703) 614-8245/6 for status, (DSN 224).

b. Officer misconduct reporting and separation procedures are beyond the scope of this outline, but briefly Navy officer misconduct is reported up the chain of command under MILPERSMAN 3410100 and officer resignations are submitted under MILPERSMAN 3830340, and officer administrative separation policy per SECNAVINST 1920.6A. BUPERS directs officer boards.

0402. Characterized Separations. Separations are characterized as honorable, general (under honorable conditions) and Other Than Honorable (OTH) conditions.

a. Honorable. Appropriate when the quality of the member's service has mostly met acceptable standards of conduct and performance of duty or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. General. Appropriate when service has been honest and faithful but significant negative aspects of the member's conduct outweigh the positive aspects of the member's service record. This characterization is under honorable conditions. A member is eligible for this characterization if during the enlistment, induction or other service obligation performance and conduct marks fall below 1.0.

c. OTH. Appropriate when separation is based upon a pattern of adverse behavior or one or more acts that constitute a significant departure from the conduct expected of naval members. To be recommended for an OTH discharge, a member must be given the opportunity to elect an administrative board unless the member is requesting an OTH in lieu of trial by court-martial under MILPERSMAN 3630650. A member may unconditionally waive the right to a board, counsel, or any other right.

d. Uncharacterized Separations. Two types of separation are not characterized because of the short duration of service (MILPERSMAN 3610200).

(1) Entry level separation may be initiated within the first 180 days of continuous active duty.

(2) A voided enlistment or induction occurs where an enlistment was effected without the voluntary consent of the person having the capacity to understand the significance of enlisting.

0403. Procedural Matters. MILPERSMAN, chapter 36 covers the procedural requirements in which the command must be cognizant, to prevent problems with administrative processing. The following are some of the requirements:

a. The CO or person "acting" must sign all separation discharge recommendations; "By direction" signature is not permitted (MILPERSMAN 3610260.4).

b. Pending military offenses should be disposed of under the UCMJ before administratively processing a member, except where OTH in lieu of trial by

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court-martial is requested. In this case, the GCM authority either grants the request or returns the matter for further action (MILPERSMAN 3630650). However, the CO may refer cases to administrative boards without a military, state or federal conviction, or NJP. COs should refer to boards cases of Reservists where UCMJ jurisdiction does not exist for court-martial or NJP, and state and federal authorities cannot or will not prosecute. Reservists who test positive for drugs on urinalysis conducted during IDT, AT, ADT or ADSW may not be subject to UCMJ jurisdiction, but may be subject to administrative processing.

c. Processing time goals are issued in MILPERSMAN 3610100.6 as follows:

(1) By the date of expiration of enlistment or fulfillment of service obligation;

(2) fifteen working days from notification when the CO is separation authority;

(3) thirty working days from notification when Notification or Administrative Board Procedure (no board convened) is used and the case is forwarded to BUPERS for final action;

(4) fifty working days from the date a command notifies a member of commencement of separation processing to separation when a Board is convened;

(5) fifty-five working days from date command notifies a member of commencement of separation to date of separation when the SECNAV has final action on the case.

(6) All of these processing times are goals only; they do not create rights or bars to separation or characterization.

d. Convening authority for an administrative board is a CO who is empowered to convene a Special Court-Martial (MILPERSMAN 3610200.1f). COs of SELRES units do not have Special Court-Martial CA and may not convene administrative boards. The parent command to which a member is permanently assigned has primary responsibility for administrative processing. (Refer to appendix B of this publication for COs with Special Court-Martial CA.) Additionally, a member may be transferred TEMDU to a command with Special Court-Martial convening authority power for the purpose of separation and/or discipline; the transferring command need only receive approval of the ISIC, and concurrence of the gaining command.

e. Administrative separation processing is mandatory in cases of:

(1) Homosexual conduct (MILPERSMAN 3630400);

(2) misconduct due to commission of a serious offense (to include sexual perversion and sexual harassment). (MILPERSMAN 363.0600.1d) (In incest cases, preliminary notification to BUPERS (Pers-661/83) is required immediately upon discovery. Pers-83 will initiate processing.);

(3) misconduct due to civilian conviction involving an offense that resulted in, or had the potential to result in, death or serious bodily injury (MILPERSMAN 3630600.1f);

(4) drug abuse (MILPERSMAN 3630620, NAVADMIN 018/92 and OPNAVINST 5350.4B); and

(5) three time failure of Physical Readiness Test (NAVADMIN 071/93).

NOTE: Recommend that in any of the above situations carefully consult the specific references in addition to coordinating with a JAG officer and/or Pers-83, prior to initiating administrative processing.

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f. A member must be processed for all reasons for which they meet minimum criteria. The Separation Authority will then approve separation for the most appropriate reason. Whenever a member meets processing grounds for misconduct and any other reason, dual processing is required (MILPERSMAN 3620200.5).

g. A member may not be separated for conduct that has been the subject of judicial proceedings resulting in an acquittal or action having the same effect, except:

(1) When such determination was on a procedural technicality;

(2) when the judicial proceeding was conducted in a state or foreign court and SECNAV determines separation to be in the best interests of the Navy; or,

(3) when acquittal was based on lack of mental responsibility in which case the member would be processed for disability separation, if appropriate, or, if not, separation in the best interests of the service (MILPERSMAN 3610260.12a) .

h. Conduct in the civilian community of a Reservist not on active duty or performing IDT may result in OTH characterization only if such conduct directly affects performance of the member's military duties, such as conduct that results in incarceration, prohibiting a member from performing IDT, or being mobilized. Such conduct may form the basis of characterization as General only if such conduct has an adverse impact on the overall effectiveness of the Naval service, including military morale and efficiency, such as discreditable involvement with civilian authorities while not on active duty and while wearing the Naval uniform without authorization. After evidence is introduced that the member's conduct did adversely affect their Naval service, the burden is on the member to show such conduct did not adversely affect their Naval service (MILPERSMAN 3610300.4c).

i. A member being processed for separation who is Fleet Reserve/Retired list eligible will upon request be allowed to transfer to the Fleet Reserve/Retired list. If transfer results from misconduct, homosexual conduct, or security, the separation authority must determine whether to retire in the grade held or the next inferior grade (MILPERSMAN 3610260.10).

j. Adverse matter from a prior enlistment or period of service, such as NJP or courts-martial, may be considered only when such records would have value in determining whether separation is appropriate (MILPERSMAN 3610260.11). Characterization is to be based solely on the member's service record during the current enlistment or period of service, not on prior enlistments or periods of service. Activities which took place prior to service may not be considered on characterization, except in defective enlistment cases (MILPERSMAN 3610300.4a).

k. If a member has had alcohol or drug incidents, OPNAVINST 5350.4B requires medical evaluation by a physician or clinical psychologist. All alcohol or drug dependent members shall be offered 30 days inpatient treatment via the Veterans Administration before discharge, regardless of the reason for separation. However, members of the Naval Reserve not on active duty have' no specific right to Veterans Administration treatment incident to processing for administrative discharge. A dependency determination (alcohol or drug) is therefore not specifically required as part of the administrative separation process (OPNAVINST 5350.4B, to enclosure (7) appendix C).

l. If a member is absent without authority after receiving notice of separation processing, the member may be separated. If a member is out of military control because of civil confinement and civil authorities are unwilling to release the member for the board, a board may hear the member's case in their absence following notice to the incarcerated member and any election of rights, and the case may be presented by counsel for the

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respondent without the respondent being present (MILPERSMAN 3640200.1c). If notification of administrative separation proceedings has been initiated against a member of a Reserve component not on active duty, the case may be processed if the member has waived a personal appearance; or if the member does not respond to the notice of proceedings on or before the suspense date provided; or if the member fails to appear at a hearing without good cause (MILPERSMAN 3640200.1e).

0404. Basis For Separation. MILPERSMAN 3610100 lists the grounds upon which a commander may commence proceedings to separate enlisted personnel from the Navy. Some of the disciplinary grounds most frequently used (or which specifically apply to Reservists) and the MILPERSMAN paragraphs which describe those grounds are:

- a. Homosexual Conduct (MILPERSMAN 3630400).
- b. Misconduct (MILPERSMAN 3630600).
 - (1) Minor disciplinary infractions;
 - (2) pattern of misconduct (Note: Pattern of misconduct has been reclassified as two or more NJP's, courts-martials or civilian convictions within the current enlistment);
 - (3) commission of a serious offense; and
 - (4) civilian conviction,
- c. Drug abuse (MILPERSMAN 3630620).
- d. In lieu of trial by court-martial (MILPERSMAN 3630650).
- e. Unsatisfactory participation in the Ready Reserve (MILPERSMAN 3630800) (see also BUPERSINST 1001.39B).

0405. Notification Procedure (MILPERSMAN 3640200.4). This process is used when an OTH discharge is not authorized; or even when an OTH is authorized; but the offense, or the circumstances surrounding the offense are such that an OTH is not desired by the processing command. Members who have 6 or more years of total active and Reserve service may elect an administrative board when being processed by notification procedures unless the reason is for Best Interest of the Service. (Note: Notification procedures are NOT authorized for cases requiring mandatory separation; see paragraph 0403e above.)

- a. Notification Procedure Proposed Action. The written notice to the respondent shall include matters per MILPERSMAN 3640200.5.
- b. Counsel Rights (MILPERSMAN 3640200.3c). A respondent has an absolute right to be represented by counsel, certified under UCMJ, article 27b. If a respondent, in writing, declines counsel, a nonlawyer counsel may be appointed. The respondent may also consult with civilian counsel retained at their own expense.
- c. Statement. A respondent has the right to present an oral or written statement to the CA.
- d. Response Time. The respondent shall be provided a minimum of 2 working days to respond to the notice, or 30 days if the member is in civil confinement or a Reservist not on active duty. Service may be accomplished by mail. An extension may be granted upon a timely showing of good cause.
- e. The Statement of Awareness for Notification Procedure is shown in MILPERSMAN 3640200.6.

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0406. Administrative Board Procedure. The Administrative Board Procedure (MILPERSMAN 3640200) must be used if the proposed separation ground is one of the basis requiring mandatory processing (or a case of separation in lieu of trial by court-martial). A member with 6 or more years total active and Reserve military service may also request a Board under the Notification Procedure.

a. Administrative Board Procedure Notice. The member shall be notified in writing by the CO of matters set out in MILPERSMAN 3640200.

b. Counsel Rights (MILPERSMAN 3640200.3). A respondent has the same right to counsel as prescribed for Notification Procedures before electing or waiving any rights. If a board is requested, the respondent shall be represented by qualified counsel appointed by the CA or by individual counsel of the respondent's own choice if that counsel is determined to be reasonably available. The respondent shall have the right to consult with civilian counsel of their own choice and may be represented at the hearing by that counsel or any other civilian counsel at their own expense. Nonlawyer counsel may represent a respondent before an administrative board if the respondent expressly declines, in writing, appointment of a qualified counsel and requests a specific nonlawyer counsel.

c. Response (MILPERSMAN 3640200.4). The respondent shall be provided a reasonable time, not less than 2 working days to respond to the notice. An extension may be granted upon a timely showing of good cause. The election as to each right shall be recorded and signed by the respondent and counsel.

d. The respondent will execute a statement of awareness as shown in MILPERSMAN 3640200.6.

e. Waiver. If the right to an administrative board is waived, the case shall be forwarded to the separation authority who will direct retention, separation, or suspended separation.

f. Board Composition (MILPERSMAN 3640350.1b). Administrative boards consist of three or more Regular or Reserve officers or enlisted personnel E7 or above (not frocked) and senior to the respondent; at least one of whom must be in the grade of O4 or higher. (Note: The senior member may be any O4 or above, either active duty or Reserve, including SELRES, and may be from either the line or staff community.) A majority of the board shall be commissioned or warrant officers. Where the respondent is a Reservist, at least one member of the Board shall be a Reserve commissioned officer, and all members shall be senior to the respondent (see appendix D of this publication). Additionally, if the characterization of service as an OTH is possible and the respondent is a Reservist, all members of the board shall be commissioned officers and senior to the respondent. The appointing letter for the Board is per MILPERSMAN 3640350.1b(1) (h) (refer to MILPERSMAN 3640350.1b(1) (c) when required board matters are not available at the processing command).

g. Recorder (MILPERSMAN 3640350). The CA shall detail a nonvoting recorder. The recorder's duties include clerical and preliminary preparation as well as presentation to the Board in an impartial manner of all available information concerning the respondent. The recorder also prepares the report of the Board which, together with all papers, is forwarded to the separation authority. COs and executive officers of respondents are not eligible to serve.

h. Reporter. A reporter need not be appointed. But if witnesses are expected to testify, a reporter is recommended.

i. Legal Advisor (MILPERSMAN 3640350.1b(2)). At the CAs discretion, a nonvoting legal advisor who is a judge advocate certified under article 27(b), UCMJ, may be appointed to the administrative board. If appointed, the legal advisor shall rule finally on all matters of procedure, evidence and

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challenges, except challenges to themselves. A legal advisor shall not be junior to or in the same chain of command as any board member.

j. Hearing Procedure (MILPERSMAN 3640450.4). An administrative board functions as an administrative rather than a judicial body; consequently, the rules of evidence applicable at court-martial do not apply. Other than article 31 UCMJ limitations, the board should consider any competent evidence which is relevant and material in the case. A Privacy Act statement per SECNAVINST 5211.5D must be provided whenever personal information is solicited.

k. Witness Requests [MILPERSMAN 3640350.3c(1)]. The respondent may request attendance of witnesses at the hearing. If production of a witness will require expenditure of funds by the CA, the written request for the attendance of a witness shall also contain the following: A synopsis of the testimony that the witness is expected to give, an explanation of the relevance of such testimony to the issues of separation or characterization, and an explanation as to why written or recorded testimony would not be sufficient to provide for a fair determination.

l. Board Decisions (MILPERSMAN 3640350.5). The Board shall determine its findings and recommendations in closed session. The Board must make findings of fact relating to reasons for processing; recommendations as to retention or separation; and if the Board recommends separation, it may recommend that the separation be suspended. If separation is recommended, the Board must State the basis therefor, as well as the recommended characterization. The Board report form is in MILPERSMAN 3640350.7.

m. Record of Proceedings. The record shall be in summarized form unless the CA or separation authority directs that a verbatim transcript be kept. The findings and recommendations of the Board shall be verbatim. The record, which is authenticated by the President, is forwarded together with all exhibits and the Board's report to the CA who notes concurrence or nonconcurrence in a letter of transmittal. See MILPERSMAN 3640350.6 for record of proceedings submission requirements. It is not necessary for counsel for the respondent or respondent, if not represented, to review the record of proceedings and all supporting documentation before forwarding to BUPERS. A statement of deficiencies can be submitted separately via the CA to BUPERS.

n. Suspension of Separation (MILPERSMAN 3610260.14). Except when prohibited by the MILPERSMAN, a separation may be suspended by BUPERS or higher authority for a specified period of not more than 12 months, if the circumstances of the case indicate a reasonable likelihood of rehabilitation.

0407. Separation Authority

a. Special Court-Martial Convening Authorities (SPCMCA). The SPCMCA may effect the separation of the respondent in the following circumstances:

(1) Any mandatory processing case (except cases involving homosexual conduct) where a board was held and the board recommended an Honorable, General, or Entry Level Separation (ELS) discharge. (Note: The SPCMCA may not effect separation in a mandatory processing case in which the respondent has waived the board hearing unless it is a weight control failure case.)

(2) The several miscellaneous, nonmisconduct, basis for separation in MILPERSMAN 3620200.1 through 3620200.16.

(3) Cases involving misconduct that do not require mandatory processing in which the notification procedures were used (see paragraph 0405 above) or when a board was held AND the board recommended an Honorable, General, or ELS discharge.

(4) When a member has requested an OTH in lieu of trial by court-martial AND the sole basis of the request is an UA of 30 days or more.

b. GCMCA. The GCMCA may effect the separation of the respondent in the following circumstances:

(1) All mandatory processing cases (except cases involving homosexual conduct and weight control failure) in which the respondent has waived their board, or when a board was held and the board recommended retention or separation with an OTH.

(2) All other cases involving misconduct in which a board was held and the board recommended separation with an OTH.

(3) When a member has requested an OTH in lieu of trial by court-martial (except cases in which the request is based on either homosexual conduct or UA for 30 days or more).

(4) All cases involving defective enlistment and inductions, except when the processing command is recommending retention of the member (MILPERSMAN 3630100).

(5) All cases involving unsatisfactory participation in the Ready Reserves (MILPERSMAN 3630800).

c. BUPERS. The Bureau must effect the separation of the respondent in the following circumstances:

(1) All cases involving homosexual conduct.

(2) Defective enlistment and inductions when the processing command recommends waiver of the processing and retention of the member.

(3) All misconduct cases when the respondent has a Physical Evaluation Board (PEB) completed or pending.

(4) Any case when the respondent has 18 years or more active duty service.

(5) Miscellaneous; conscientious objections (MILPERSMAN 1860120), and selected changes in service obligations (MILPERSMAN 3620100.1a, and 3620100.1b).

d. Secretary of the Navy (SECNAV). The Bureau must effect the separation of the respondent in the following circumstances:

(1) Any case involving separation in the best interest of the Navy (MILPERSMAN 3620270).

(2) Disability (3620270).

(3) All cases involving Reservists who are within 2 years of eligibility for retired or retainer pay.

(4) All cases when the sole basis for processing is a SPCM/GCM conviction that did not result in a punitive discharge, AND the processing command recommended an OTH.

(5) All misconduct cases based solely on civil conviction(s) when the final action on appeal has not been taken (unless the member requests separation prior to the final action on appeal).

0408. After Action Reporting (MILPERSMAN 3640700.9 and 3640200.11). When processing of a member for administrative separation has been completed, COs are authorized to submit the case to the separation authority by message for final action, except where the member's case has been heard by an administrative board, or the CO is the separation authority. Due to the limitations of

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the message format, commands processing USNR-R members, and members being processed "In the Best Interest of the Service," are not authorized to submit cases via message and must use the transmittal letter format (MILPERSMAN 3640200.9). Message submissions are to be transmitted by routine precedence. When an administrative separation case is submitted by message, the supporting documents required to complete the package should be forwarded to BUPERS within 15 working days after the message is sent.

0409. Naval Discharge Review Board. The Naval Discharge Review Board was established under 10 U.S.C., section 1553 (1982) and operates under SECNAVINST 5420.174c (MILPERSMAN 5040200.2). The Board consists of five member panels of active duty Navy and Marine Corps officers in the grade of O4 or higher. The Board panels meet regularly in Washington, and travel periodically to other areas within the continental United States. Upon request, the Board has the authority to review discharges and to upgrade the characterization of service.

0410. Board For Correction of Naval Records (BCNR). The BCNR was established under 10 U.S.C., section 1552 (1982) (MILPERSMAN 5040200.3). Implementing regulations are contained in Title 32, Code of Federal Regulations. The Board consists of at least three civilian members and considers all applications properly before it to determine the existence of an error or injustice in a naval record and makes appropriate recommendations to SECNAV.

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CHAPTER V

URINALYSIS

0501. Introduction. "Zero Tolerance" for drug abuse is the Navy policy and applies to Reservists. Mandatory processing for administrative separation applies to all hands, officer and enlisted, for the first offense. SECNAVINST 5300.28B, OPNAVINST 5350.4B, COMNAVRESFORINSTs 5350.4E and 5350.7, MILPERSMAN 3630620.

0502. Uses Of Urinalysis. Depending upon how the sample was obtained, a positive urinalysis test may be used for a number of different purposes. It is important to recognize when, and under what circumstances, a command may conduct a urinalysis (see appendix E of this publication).

0503. Types Of Tests And Authority To Conducta. Search and Seizure

(1) Tests Conducted with Member's Consent. Members suspected of having unlawfully used drugs may be requested to consent to urinalysis testing. Prior to requesting consent, the member should be advised that they may decline to provide the sample. While not a requirement, it is an important consideration in establishing that the consent was voluntary. Article 31(b), UCMJ, warnings are not necessary if no other questioning of the member takes place.

(2) Probable Cause Tests. If the member refuses to provide a sample and there is probable cause to believe that the member has committed a drug offense and that a urinalysis test will provide evidence of that offense, the member's CO should order a probable cause test. See M.R.E. 312(d) and 315, MCM (1984).

b. Inspections. Commands may order urinalysis inspections as they do other inspections to determine and ensure the security, military fitness, and good order and discipline of the command. Commanders may not order urinalysis inspections for the primary purpose of obtaining evidence for trial by courts-martial or for other disciplinary purposes. However, results of an inspection urinalysis, properly conducted, may be used for any purpose.

(1) Selection of members for urinalysis inspections authorized by commanders, Cos, and OICs may include the following:

(a) Random Selection of Individual Members from the Entire Unit, or Alternatively, from any Identifiable Segment or Class of Unit. An identifiable segment includes a department, division, workcenter, watch section, barracks, or all personnel reporting on-board in the last 30 days. Such testing programs should be crafted so that all service members have an equal chance of being selected throughout the testing period.

(b) Unit Sweeps. This is urinalysis testing of an entire unit or the selection, random or otherwise, of an entire subunit or other identifiable segment of a command; e.g., an entire division, department, watch section, all personnel in a specific paygrade, all personnel returning from UA.

(c) All unit testing is subject to quota limits. Each unit may only submit samples to the Navy Drug Screening Laboratory of a maximum of 20 percent of its assigned personnel or 200 samples whichever is less.

(2) Service-Directed Testing. Service-directed testing is merely testing directed by SECNAV or CNO.

c. Fitness for Duty Testing. Categories for fitness for duty testing are described below. This category of urinalysis testing covers all testing not covered by paragraphs 0503a and 0503b above.

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(1) Command-Directed Tests. These tests are ordered whenever a member's conduct or behavior gives rise to a suspicion of drug abuse and a urinalysis test has not been conducted on a consensual or probable cause basis; e.g., the member reports to work under the influence or returns from UA.

(2) AfterCare and Surveillance Testing. This testing is periodic testing of identified drug abusers. AfterCare testing applies to those members participating in a rehabilitation program. Surveillance testing applies to those members who do not participate in a rehabilitation program.

(3) Evaluation Testing. This testing takes place when a commander doubts a member is guilty of drug abuse following a laboratory-confirmed urinalysis result. This testing may be conducted from 2 to 6 months but for no more than two samples per week for 8 weeks.

(4) Physician-Directed Tests. These tests may be in connection with a competence for duty examination or any other medical examination based on a command referral. It does not include tests ordered by a physician for medical diagnostic purposes.

(5) Safety Investigation Testing. A CO or an Investigating officer (IO) may order a urinalysis test in connection with any formally convened mishap or safety investigation. Results may not be used for any punitive or administrative action against the member.

d. Medical Purpose Testing. This is testing for the purpose of assisting in medical treatment of the member.

0504. Policy as to Reservist

a. Reservists performing IDT, IDTT, or in an AT or ADT status, who test positive for controlled substances shortly after entry into a duty status, although subject to the UCMJ at that time, are not subject to disciplinary action without other corroborating evidence to show the drug was used while in such duty status. The urinalysis test identifies a metabolize of a drug not the drug itself. In other words, the wrongful drug use, which is the offense, could have occurred prior to the time the member became subject to the UCMJ.

b. Although not subject to disciplinary action, a Reservist who tests positive for a controlled substance should be administratively processed for drug abuse using Administrative Board procedures.

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CHAPTER VI

JAG MANUAL INVESTIGATIONS

0601. Introduction. JAGMAN, change 2, made substantial changes to the way JAGMAN investigations are to be conducted, routed, and maintained. This change gives local commanders control over the investigative process and is expected to generate fewer investigations. Commanders can now take the most appropriate approach to each investigation. Only certain investigations will be forwarded to JAG. The GCMCA or CA will maintain and release investigations rather than JAG. Many investigations will be maintained by the CA. Change 2 became effective 1 October 1995. The period 1 July 1995 through 30 September 1995 was an interim period in which either the old or the new rules could be used.

0602. Preliminary Inquiry. A preliminary inquiry is conducted for all incidents potentially warranting an investigation (JAGMAN 0204a). This inquiry will determine whether additional investigation is warranted. It also gives commands flexibility, enabling them to respond rapidly to an incident. No particular format is required, but the CA may choose that it be in writing. Any evidence gathered should be preserved for the IO (JAGMAN 0204e). The preliminary inquiry should normally be completed in 3 working days (JAGMAN 0204f). In many cases the preliminary inquiry is all that a command need do.

0603. Three Types of Administrative Investigations. Investigations are divided into three categories: Command investigations; litigation report investigations; and courts and boards of inquiry. The subject matter and facts of the investigation will dictate the routing. Only those commands whose endorsements will add value may conduct a review and endorse the investigation.

a. Command Investigations. A command investigation should be used to investigate incidents of primary interest to the command; e.g., most death cases, flooded compartments, some injury cases (JAGMAN 0209a). The CA may determine to retain the investigation if it is of no interest to anyone outside the command (JAGMAN 0209g). If the CA determines to forward the investigation, it shall be forwarded to the Area Coordinator (AC) unless otherwise directed by COMNAVSURFRESFOR or COMNAVIAIRESFOR. Only the following types of investigations shall be forwarded to COMNAVSURFRESFOR or COMNAVIAIRESFOR:

- (1) Incidents involving officers;
- (2) lost, missing, or stolen property in excess of \$1,000;
- (3) security violations; and
- (4) all training incidents.

b. Litigation-Report investigations. Litigation-report investigations document incidents that may lead to claims or civil litigation for or against the Department of the Navy (DON) or the United States (JAGMAN 0210a). The CA will contact the supervisory REDCOM's SJA for a preliminary determination as to whether a litigation-report investigation is necessary. If it is necessary the REDCOM SJA (after consultation with the servicing NLSO) will assign a judge advocate near the local command for assistance. The convening order will then detail that judge advocate to supervise the IO. The judge advocate is not the IO (JAGMAN 0210b., 0210c). In the case of all environmental incidents; e.g., oil spills, "midnight dumping," the CA will contact COMNAVRESFOR FJA (N003), DSN 678-5303 or commercial (504) 678-5303.

(1) Normally, the investigation should not contain any signed or sworn statements from witnesses, as they are subject to discovery by opposing parties. Rather, witness statements should be summarized in memo form, signed by the IO, and included as an enclosure to the investigative report (JAGMAN 0210e(1)).

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(2) The IO will not state any opinions or recommendations in the investigative report without the direction to do so by the judge advocate supervising the investigation (JAGMAN 0210e(2)).

(3) The investigative report shall be marked "FOR OFFICIAL USE ONLY: LITIGATION/ATTORNEY WORK PRODUCT" (JAGMAN 0210e(3)). The CA shall forward the investigative report via the AC to OJAG (Code 33) (JAGMAN 02109(2)).

c. Courts and Boards of Inquiry. These types of investigations are used to investigate major incidents which include multiple deaths, substantial property loss, or significant damage to the environment. These investigations use a hearing procedure (JAGMAN 0211a). The following is a composition of a court/board of inquiry.

(1) A court of inquiry consists of at least three commissioned officers and a legal counsel (JAGMAN 0211b(2)).

(2) A board of inquiry consists of one or more commissioned officers and a legal counsel (JAGMAN 0211c(2)).

(3) A CA, in a court or board of inquiry matter, shall review the report and either endorse it or return it for further investigation. In the endorsement the CA may approve, disapprove, modify, or add to the findings of fact, opinions, and recommendations. The CA shall also state the corrective action to be taken, if any (JAGMAN 0211j(1)). The CA shall forward the original investigation to the AC via all superior commanders who have a direct official interest in the recorded facts (JAGMAN 0211j (2)).

0604. Special Matters

a. Line of Duty (LOD)/Misconduct. JAGMAN, change 2, has not changed when an LOD determination is required. An LOD will require a preliminary inquiry. A member is presumed to be in the LOD and the injury not due to misconduct unless contrary findings are made (JAGMAN 0221a). With respect to Reservists, a CA must issue "interim" LOD determinations within 7 days of being notified that a Reservist not on the active duty list has an incapacitating injury or illness incurred or aggravated while on AT, ADT, or performing IDT or IDTT, or travel to or from such duty (JAGMAN 0232). NAVJAG 5800/15, previously used to document injuries which are LOD has been eliminated. The procedure now required is to document the injury in the member's medical record only (JAGMAN 0230c).

b. Drunk Driving. A new provision based upon article 111, UCMJ, has been added to the JAGMAN. Section 0227b(1) sets forth the presumption that the member is impaired if the BAC is .10 percent or greater.

c. Death Cases (JAGMAN 0234). If there is no military connection to the death, an investigation is not required. Simply obtain the civilian report and maintain it on file. When an investigation is necessary, to enhance the investigation process in cases where the propriety of a deceased member's conduct is questioned (including apparent suicide cases) the CA may have the report reviewed by an individual out of the chain of command and unfamiliar with the investigation (JAGMAN 0239a). It is important to remember that death cases always require sensitive handling, as the ultimate viewers of the report are the victim's family members. Grieving family members want the facts, but are also coping with the death of a loved one. While the investigation requires the facts, speculation and innuendos adds nothing to the investigation report as to how the death occurred and will likely have an adverse impact on the family and should be avoided.

d. Reservists. JAGMAN 0253 addresses the investigation of incidents involving injury to or death of a Reservist that occurred during AT, ADT, IDT, IDTT or that occurred while traveling directly to or from places where members are performing or have performed such duty. In every case, an investigation should be conducted. The AC has the responsibility to ensure that such investigations are conducted.

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CHAPTER VII

COMPLAINT OF WRONGS

0701. Introduction. Article 1150, U.S. Navy Regulations, 1990, as amended, sets forth the policies and procedures which govern the 'submission, investigation and resolution of any grievance of a member of the naval service against any senior. Article 138, UCMJ, and JAGMAN chapter 3, provide the statutory Provisions and secretarial regulations governing the submission, investigation and resolution of complaints of wrong against COs. UCMJ article 138 and JAGMAN chapter 3 also apply to article 1150 complaints.

0702. Policy. DON's policy is to resolve the complaints of wrong at the lowest level of command. The wrong may consist of either action or inaction by the respondent that affects the complainant directly or personally. The following complaints are not cognizable:

- a. Acts affecting the complainant, but neither initiated nor ratified by the respondent;
- b. acts that are not final;
- c. general policies of DoD and DON;
- d. requests seeking disciplinary action against another;
- e. decisions or procedures of the GCMCA involving an article 138 complaint, except for failure to forward the complaint;
- f. collateral attacks on NJP, court-martial, or administrative discharge procedures; and
- g. relief for cause proceedings and decisions.

0703. Jurisdiction

- a. Complainant. The complainant must be a member of the armed forces on active duty when the complaint is submitted, or a Reservist during periods of ADT or temporary active duty, or an inactive duty Reservist alleging a wrong by a CO acting in an official capacity.
- b. Respondent. Any superior may be the respondent to a complaint of wrongs. Article 138 applies to the CO of the complainant. Article 1150 applies to a person who is superior in rank or command to the complainant.
- c. Reassignment of Parties. Reassignment of either the complainant or the respondent prior to the filing of the complaint does not prevent the processing of the complaint. If the respondent at the time of the alleged wrong detaches prior to the submission of the complaint, the complaint will be forwarded to the officer who was the GCMCA over such respondent at the time of the alleged wrong, or to the officer's successor in command. If a complainant has detached prior to the submission of a complaint, it will be forwarded via the complainant's new CO to the GCMCA over the respondent. If both the respondent and the complainant have detached prior to submission of the complaint, the complaint will be forwarded to the officer who was the GCMCA over the respondent at the time of the alleged wrong, or to that officer's successor in command via the complainant's new CO. In all cases, the complaint will be forwarded to the GCMCA via the respondent.
- d. GCMCA. The first flag officer in the respondent's chain of command has the responsibility to examine a complaint, take action thereon, and forward a report of proceedings consisting of a statement of findings and the reasons therefor. The first flag officer may or may not be the GCMCA over the respondent.

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0704. Procedure

- a. Time Limitations. A complaint must be submitted within a reasonable time after the occurrence of the alleged wrong. In the absence of unusual circumstances, a complaint initiated more than 90 days after discovery by the complainant of the alleged wrong may be considered untimely.
- b. CO's Action. A CO must be afforded an opportunity to redress a wrong prior to filing a complaint under article 138.
- c. Form of Complaint. The form in JAGMAN, chapter 3, appendix A-3-a must be used.
- d. Routing. The form is sent to the GCMCA, via the chain of command, including the respondent.. Endorsements by intermediate superiors not completed within 10 working days of the receipt of the complaint should contain an explanation for the delay.
- e. Opportunity to Rebut. The complainant shall have a reasonable period to rebut adverse matter included in any endorsements to the complaint or developed by GCMCA inquiries. See JAGMAN, chapter 3, appendix A-3-c.
- f. Withdrawal of Complaint. A complainant may withdraw their complaint at any time. The withdrawal must be made in writing and signed by the complainant.
- g. Forwarding. All complaints must be forwarded to SECNAV, including those resolved at lower levels.

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CHAPTER VIII

RECURRING SENSITIVE ISSUES0801. Sexual Harassment

a. In General. The Navy's policy prohibiting sexual harassment is very clear (see SECNAVINST 5300.26B; article 1166, U.S. Navy Regulations, 1990).

b. Policy. No member of DON shall:

- (1) Commit sexual harassment;
- (2) take reprisal against anyone who reports sexual harassment;
- (3) knowingly make a false report of sexual harassment; or,
- (4) while in a supervisory or command position, condone or ignore sexual harassment.

c. Definition. Sexual harassment is a form of gender discrimination that involves unwelcomed sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- (1) Submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, or career; or
- (2) submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person; or
- (3) such conduct interferes with an individual's performance or creates an intimidating, hostile, or offensive environment.
- (4) Any person in a supervisory or command position who uses or condones implicit or explicit sexual behavior to control, influence: or affect the career, pay, or job of a military member or civilian employee is engaging in sexual harassment. Similarly, any military member or civilian employee who makes deliberate or repeated unwelcome verbal comments, gestures, or physical contact of a sexual nature is also engaging in sexual harassment.

d. Investigation. NAVOP 028/94 sets standards for timely processing of complaints. Investigations shall commence within 3 days, preferably 1 working day. The accuser shall be notified of the investigation on the same day it begins. The accuser shall be advised to tell the CO immediately if there are reprisals. Resolution of the investigation shall be completed within 14 days after commencement for active duty members and 60 days for SELRES. "Resolution" means completing the investigation, determining the validity of charges, holding NJP, referring charges to court-martial, and notifying the accused and accuser of the command's decision. If a CO cannot meet any of these time standards, an Operation Report (OPREP) is required (or a Situation Report (SITREP) if OPREP has been previously submitted). A SITREP is required every 14 days until resolution.

e. Reports. Reports are filed via the chain of command with COMNAVRESFOR (N009B). SELRES units file via the supporting Naval Reserve Activity (NRA). All Naval Reserve commands shall submit a report of discrimination/sexual harassment within 30 days of an incident except on the incidents resolved informally. Quarterly reports are required for cases which remain open for more than 90 days. The initial command continues to file reports even if the accused is transferred.

f. Disciplinary Action. Sexual harassment is a violation of the UCMJ, articles 92 and 93, and may constitute an assault and battery in violation of UCMJ, article 128, and may also constitute indecent acts/liberty in violation of UCMJ, article 134. Such violations may be disposed of through NJP or court-martial, depending upon the seriousness of the violation.

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g. Administrative Separation. Processing for administrative separation is mandatory for the first substantiated incident of sexual harassment involving:

(1) Actions, threats, or attempts to influence another's career or job in exchange for sexual favors; or

(2) physical contact of a sexual nature which, if charged as a UCMJ violation, authorizes a punitive discharge.

0802. Fraternization

a. UCMJ, article 134; article 1165, U.S. Navy Regulations, 1990, and OPNAVINST 5370.2A prohibit personal relationships between officer and enlisted members that are unduly familiar and that do not respect differences in rank and grade. Such relationships are inappropriate and run counter to long-standing customs and tradition of the naval service. Similar relationships that are unduly familiar between officers or between enlisted members of different rank or grade may also be prejudicial to good order and discipline or of a nature to bring discredit on the naval service and are prohibited. Commanders are expected to take administrative and disciplinary action as necessary to correct such inappropriate behavior.

b. Commanders contemplating disciplinary action in this regard are encouraged to seek legal counsel from their REDCOM SJA or servicing NLSO (or TSO), per chapter I of this publication.

0803. Homosexuality

a. A person's sexual orientation is considered a personal and private matter, and is not a bar to service entry or continued service unless manifested by homosexual conduct. No one shall be asked or required to reveal whether they are heterosexual, homosexual or bisexual and will not be asked or required to reveal if they have engaged in homosexual conduct unless independent evidence is received indicating that the member engaged in such conduct or unless the member volunteers a statement that he or she is a homosexual or bisexual (NAVADMIN 033/94, CNO message 010300Z Mar 94. See SECNAVINST 5300.30C).

b. Homosexual conduct is grounds for separation from the naval service. Homosexual conduct includes homosexual acts, a statement by a member that demonstrates a propensity or intent to engage in homosexual acts, or a homosexual marriage or attempted marriage. The member's statement creates a rebuttable presumption that the member will engage in homosexual acts. The member has the burden of proof to rebut the presumption by a preponderance of the evidence.

c. Separation of the member for homosexual conduct shall be per NAVADMIN 033/94, and read in conjunction with the MILPERSMAN. Separation may be characterized as OTH only if the homosexual act occurred under one of the following circumstances:

(1) Force, coercion, or intoxication;

(2) with a minor under 16 years old;

(3) with a military subordinate;

(4) openly in public view;

(5) for pay;

(6) aboard a Navy vessel or aircraft; or

(7) in a Navy-controlled location under aggravating circumstances that have an adverse impact on discipline, good order, or morale comparable to the effect on a vessel or aircraft.

CHAPTER IX

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SPECIAL SUBJECTS0901. Detachment For Cause (DFC)

a. In General. MILPERSMAN 3410105 sets forth the policies and procedures which govern the DFC of officers. The DFC request must be forwarded via the officer concerned for comment or a statement indicating the officer does not wish to comment and an acknowledgment of the officer's rights per articles 1108 and 1122, U.S. Navy Regulations, 1990. A statement that the correspondence will be filed in the officer's service record will also be included. DFC is not to be used for punishment and is normally considered appropriate when the officer can no longer perform in the billet that they occupy and reassignment within the command is not a viable option. All disciplinary action must be completed prior to proceeding, or if not completed, the DFC should so state.

b. Procedures. When the determination has been made to request the DFC of an officer, notify BUPERS (Pers-82) by message. Preliminary action will commence, but in all cases the command must submit a detailed request per in MILPERSMAN 3410105. Final action will be taken by BUPERS only after receipt of the letter request with the officer's statement.

(1) All letter requests will be sent to BUPERS via the administrative chain of command (to include at least one flag officer).

(2) Requests originated by a flag officer shall be sent directly to BUPERS with copies furnished to appropriate officials in the administrative chain of command.

c. Documentation. The following guidance is provided to aid in the preparation of DFC requests:

(1) In misconduct cases, all factual allegations of misconduct must be adequately supported by appropriate inquiry or documentation (MILPERSMAN 3410105.4c);

(2) in cases involving a significant event, the details of the event must be adequately documented (MILPERSMAN 3410105.5c);

(3) in cases involving unsatisfactory or marginal performance over an extended period of time, the developing situation and guidance/counseling must be properly documented (MILPERSMAN 3410105.5d). Letters of instruction which indicate discrepancies and provide specific remedial direction must be attached. Nonpunitive letters of caution can only be used to rebut member's assertion of lack of counseling. A chronology of events is also recommended; and

(4) in cases of loss of confidence in an officer in command, an articulated, fact-supported loss of confidence, concurred with by a flag officer in the chain of command should be described (MILPERSMAN 3410105).

d. Interviews. In officer DFC requests, the first flag officer in the chain of command, when feasible, should conduct an interview with the officer concerned and include the results of that interview in the endorsement.

0902. Standards Of Conduct

a. Policy. Standards of ethical conduct have been established for all DON personnel in the Joint Ethics Regulation (JER), DoD 5500.7-R, which includes the Office of Government Ethics Regulations, 5 C.F.R. 2635.

b. Action. Commanders and heads of bureaus, offices, or activities, and naval personnel exercising command authority are responsible for ensuring compliance with standards of conduct rules and regulations and are accountable for the manner in which they exercise that responsibility.

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c. Subjects Covered. Common subjects with JER section references are listed below:

- | | |
|---|-------------------|
| (1) Gifts from outside sources | 2-202/2-300 |
| (2) Gifts between DoD employees | 2-203 |
| (3) Sales to junior personnel | 2-205/5-409 |
| (4) Outside employment | 2-206/2-303/3-306 |
| (5) Use of Government telephones | 2-301 |
| (6) Gambling | 2-302 |
| (7) Use of military title | 2-304 |
| (8) Participation in non-Federal entities | 3-200/3-300 |
| (9) Endorsements | 3-205 |
| (10) Fundraising | 3-210 |
| (11) Use of Federal resources | 3-305 |
| (12) Honoraria | 3-307 |
| (13) Travel benefits | 4-100 |
| (14) Awards, payments | 4-102 |
| (15) Frequent flyer credits | 4-201 |
| (16) Travel upgrades | 4-202 |
| (17) Conflicts of interest | 5-300 |
| (18) Bribery, graft | 5-400 |
| (19) Additional pay/allowances | 5-405 |
| (20) Political activities | 6-200/6-300 |

d. Ethics Advisors. All REDCOM SJAs and all COs of NLSOs are ethics advisors and may provide ethics advice and "safe harbor" to members of their area of responsibility.

0903. Freedom of Information Act/Privacy Act. If you have any questions regarding these Acts you should contact your REDCOM SJA.

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APPENDIX A

SUMMARY OF JURISDICTION OVER RESERVISTS

1. Reservists on active duty (AT, ADT, ADSW) or performing Inactive Duty Training (IDT/IDTT) are subject to the UCMJ while in that status (article 2(a)(1), (3), UCMJ; JAGMAN 0107; MILPERSMAN 3420320.1a(1)).

a. Active duty. A Reservist under orders (AT, ADT, ADSW) becomes subject to military jurisdiction at 1 minute past midnight on the date on which they are to report for active duty, notwithstanding the "printed" time on the orders (United States v. Cline, 29 M.J. 83 (CMA 1989)).

b. IDT. A Reservist is only subject to military jurisdiction from the official commencement to termination of each individual IDT period.

2. Jurisdiction is not lost over Reservists upon termination of IDT or active duty for an offense committed while subject to the UCMJ (article 3(d), UCMJ; JAGMAN 0123d; MILPERSMAN 3420320.1a(1)).

3. A General Court-Martial Convening Authority (GCMCA) can recall a Reservist to active duty involuntarily for an article 32, UCMJ, investigation, trial by court-martial, or imposition of NJP, for offenses committed while performing IDT or active duty. The GCMCAs for the Naval Reserve are COMNAVRESFOR, COMNAVSURFRESFOR, and COMNAVAIRESFOR (article 2(d), UCMJ; JAGMAN 0123e(1); MILPERSMAN 3420320.1a(1)a).

4. Only a court-martial convening authority can generate a request to a GCMCA to recall a Reservist to active duty involuntarily (JAGMAN 0123e(2); MILPERSMAN 3420320.3a(1)).

5. A Reservist on active duty can be extended beyond their normal release date if they have been apprehended, arrested, confined, under investigation, or the command has taken action with a view to trial by court-martial. A Reservist may not be held over for nonjudicial punishment (rule for Court-Martial (RCM) 202(c), MCM; JAGMAN 0134a; MILPERSMAN 3420320.4a(2)).

6. A Reservist performing IDT may be retained in that status by a GCMCA for not more than 2 full working days past the end of IDT if:

a. There is reasonable belief they committed an offense with a maximum punishment of more than 10 years confinement or death;

b. approval, oral or written, for holdover is obtained prior to expiration of IDT from a GCMCA; and

c. immediate action is taken to order the member to active duty for trial by court-martial. A Reservist may not be held over for NJP (JAGMAN 0134b(1); MILPERSMAN 3420320.4(b) (1)).

7. A Reservist performing IDT may be placed in pretrial confinement if the circumstances of the offense warrant and an order to active duty with Assistant Secretary of the Navy (Manpower and Reserve Affairs) approval, to include pretrial confinement, is obtained within two working days past the end of IDT (R.C.M. 304 and 305, MCM; JAGMAN 0134b(2); MILPERSMAN 3420320.3b(NOTE) and MILPERSMAN 3420320.5a).

8. Restraint on Liberty

a. Restraint on liberty cannot be extended beyond the normal IDT periods, but may be carried over to subsequent IDT periods (JAGMAN 0112a(1); MILPERSMAN 3420320.2c(2)).

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A Reservist performing IDT cannot be ordered to active duty to serve restraint punishment without SECNAV approval. A Reservist ordered to active duty for disciplinary purposes cannot be extended on duty to serve restraint punishment, nor can they receive confinement as a sentence, unless the order to active duty was with SECNAV approval (JAGMAN 0112a(1); MILPERSMAN 3420320.2c(1)).

9. Reservists performing IDT may not be required to perform EMI outside normal periods of IDT (JAGMAN 0103b(2)).

APPENDIX B

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CONVENING AUTHORITIES IN THE NAVAL RESERVE

AUTHORITY

1. GENERAL COURT-MARTIAL JAGMAN 0120a(2)
 Officers designated by SECNAV
 (COMNAVRESFOR/COMNAVSURFRESFOR/
 COMNAVAIRRESFOR).
2. SPECIAL COURTS-MARTIAL Article 23(a) (1),
 UCMJ
 - a. Any GCM convening authority.
 - b. All commanders and COs of Navy
 units and activities, BUT NOT
SELRES/VTU UNITS. JAGMAN section 0120b(3)
3. SUMMARY COURTS-MARTIAL Article 24(a) (1),
 UCMJ
 - a. Any GCM or SPCM convening authority.
 - b. SELRES/VTU unit CO when in a duty
 status. JAGMAN section 0120c
 MILPERSMAN 3420320.2b
4. ARTICLE 32 INVESTIGATION RCM 405(c)
 Any SPCM court-martial convening authority. JAGMAN section 0122A(1)
5. GRANTS OF IMMUNITY TO WITNESSES JAGMAN section 0238a
 Any GCM convening authority. RCM 404(c)
6. IMPOSE NJP JAGMAN section 0106
 Any commander, CO, and OIC
 including SELRES/VTU units. MILPERSMAN
 3420320.2b
7. REVIEW OF NJP APPEALS JAGMAN section 0117a
 Any GCM convening authority
 (Surface - area coordinator/Air -
 COMNAVAIRESFOR).
8. INVOLUNTARY RECALL OF RESERVISTS Article 2d(1)
 GCM convening authority in the chain JAGMAN section 0123e(4)
 of command. MILPERSMAN
 3420320.3
9. ADMIN BOARD MILPERSMAN
 Any SPCM convening authority. 3610200.1
10. COURT OF INQUIRY JAGMAN section 0211b
 Any GCM convening authority or
 SECNAV designee.
11. BOARD OF INQUIRY JAGMAN section 0211c
 Any GCM authority.

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12. LITIGATION REPORT INVESTIGATION

JAGMAN section 0210

Any officer in command (including OICs)
in consultation with a JAG officer.

13. COMMAND INVESTIGATION

JAGMAN section 0209c(1)

Any officer in command (including OICs).

14. REVIEW OF ARTICLE 138's

JAGMAN section 0302a, 0303e,
0305c

GCM convening authority superior in
chain of command.

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APPENDIX C

LIMITS OF PUNISHMENTS UNDER UCMJ, ARTICLE 15

Imposed by	Imposed on	Confinement on B&W or Dim Rats (2)	Correction custody (3)	Arrest in Quarters (4)	Forfeiture (5)	Reduction (6)	Extra Duties (7)	Restriction to Limits (7)	Punitive censure (8)
General Officers in Command	Officer	No	No	30 days	1/2 x 2 mos.	No	No	60 days	Yes
	E4 to E9	No	No	No	1/2 x 2 mos.	1 grade	45 days	60 days	Yes
	E1 to E3	3 days	30 days	No	1/2 x 2 mos.	1 grade	45 days	60 days	Yes
Commanding Officers 04-06	Officers	No	No	No	No	No	No	30 days	Yes
	E-4 to E-9	No	No	No	1/2 x 2 mos.	1 grade	45 days	60 days	Yes
	E-1 to E-3	3 days	30 days	No	1/2 x 2 mos.	1 grade	45 days	60 days	Yes
Commanding Officers 03 & Below & OICs	Officers	No	No	No	No	No	No	15 Days	Yes
	E-4 to E-9	No	No	No	7 days	1 grade	14 days	14 days	Yes
	E-1 to E-3	3 days	7 days	No	7 days	1 grade	14 days	14 days	Yes

(1) OICS have NJP authority over enlisted personnel only. (JAGMAN 0106b)

(2) May be awarded only to E3 and below and if attached to/embarked in a vessel and may not be combined with any other restraint punishment or extra duties. (Paragraph 5d(2), Part V, MCM; JAGMAN 0111c) Reservists: May not be imposed unless ordered to active duty with SECNAV approval. (JAGMAN 0112a(3))

(3) May not be combined with restriction or extra duties and may be awarded only to E3 and below. (Paragraph 5d(3), Part V, MCM; JAGMAN 0111b) Reservists: May not be imposed while on inactive duty training. (JAGMAN 0112a(4))

(4) May not be combined with restriction and shall not be permitted to exercise authority over any person who is otherwise subordinate to him/her. (Paragraph 5d(1), Part V, MCM; JAGMAN 0111f) Reservists: May not be imposed while on IDT. (JAGMAN 0112a(4))

(5) Shall be expressed in whole dollar amounts only. (Paragraph 5c(8), Part V, MCM)

(6) Pay grades E7 through E9 may not be reduced at NJP; E6 and below only to next inferior pay grade. (Paragraph 5c(7), Part V, MCM; JAGMAN 0111e)

(7) Restriction and extra duties may be combined to run concurrently, but the combination pay not exceed the maximum imposable for extra duties. (Paragraph 5d(4), Part V, MCM) Upon commissioned and warrant officers: May not exceed 15 consecutive days when imposed by O4 and below. (JAGMAN 0111a) Reservists: May not be extended on IDT or ordered to active duty for the purposes of serving restriction, unless the order to active duty received SECNAV approval. Extra duty may not be imposed while on IDT. (JAGMAN 0112a(1),(2),(4))

(8) Must be in writing for commissioned and warrant officers. (Paragraph 5c(1), Part V, MCM; JAGMAN 0114c)

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APPENDIX D

COMPOSITION OF ENLISTED ADMINISTRATIVE SEPARATION BOARDS
(NOTE: ALL BOARDS REQUIRE AT LEAST THREE MEMBERS)

Ref: MILPERSMAN 3640350.1b

	<u>RESPONDENT'S COMPONENT OF SERVICE</u>		
	USN	USNR	USNR-R
AT LEAST ONE MEMBER SHALL BE A LINE OFFICER 04 (UNFROCKED) OR HIGHER	M	M	M
MAJORITY SHALL BE COMMISSIONED OR WARRANT OFFICER	M	M(1)	M(1)
ENLISTED E7 OR ABOVE AND SENIOR TO RESPONDENT MAY BE APPOINTED	O	O(2)	O(2)
	M - MANDATORY		O - OPTIONAL

NOTE:

1. Appointment of at least one member who is a Reserve commissioned officer.
2. Enlisted members may not be used if the respondent is a Reservist and the characterization of service as OTH is possible.

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APPENDIX E

USE OF DRUG URINALYSIS RESULTS

	Usable in disciplinary proceedings	Usable as basis for separation	Usable for (other than honorable) characterization of service	
1. Search or Seizure -	Y E S	YES	YES	
- member's consent	YES	YES	YES	
- probable cause	YES	YES	YES	
2. Inspection				
- random sample	YES	YES	YES	
- unit sweep	YES	YES	YES	
3. Medical - general diagnostic purposes (e.g., emergency room treatment, annual physical exam, etc.)	YES	YES	YES	
4. Fitness for duty				
- command-directed	NO	YES	NO	
- competence for duty	NO	YES	NO	
- aftercare testing	NO	YES	NO	
- surveillance	NO	YES	NO	
- evaluation	NO	YES	NO	
- mishap\safety investigation	NO	NO	NO	
5. Service directed				
- rehab facility staff (military metiers)	YES	YES	YES	
- drug\alcohol rehab testing	NO	YES	NO	
- PCS overseas, naval brigs	"YES	YES	YES	
- entrance testing	NO	YES	*NO	(R
- accession training pipeline	YES	YES	YES	(R

*YES for reservists recalled to active duty only (except Delayed Entry Program participants)

APPENDIX F

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REFERENCES

1. United States Constitution.
2. Uniform Code of Military Justice (UCMJ), (10 USC 801 *et seq*).
3. Manual for Courts-Martial (MCM), 1984.
4. JAGINST 5800.7C; Subj: MANUAL OF THE JUDGE ADVOCATE GENERAL (JAGMAN).
5. *United States v. Cline*, 29 M.J. 83 (CMA 1989).
6. *Solorio v. United States*, 483 U.S. 485 (1987).
7. *United States v. Chodara*, 29 M.J. 943 (ACMR 1990).
8. NAVPERS 15560C; MILPERSMAN.
9. OPNAVINST 5350.4B; Subj: ALCOHOL AND DRUG ABUSE PREVENTION AND CONTROL.
10. SECNAVINST 5520.3B; Subj: CRIMINAL AND SECURITY INVESTIGATIONS AND RELATED ACTIVITIES WITHIN THE DEPARTMENT OF THE NAVY.
11. OPNAVINST 5400.24D; Subj: COMMAND, AREA COORDINATION, AND COMMAND RELATIONSHIPS .
12. SECNAVINST 1910.4A; Subj: ENLISTED ADMINISTRATIVE SEPARATIONS.
13. DoD Directive 1332.14; Subj: ENLISTED ADMINISTRATIVE SEPARATIONS.
14. SECNAVINST 1920.6A; Subj: ADMINISTRATIVE SEPARATION OF OFFICERS.
15. CNO WASHINGTON DC 061002Z FEB 92 (NAVADMIN 018/92); Subj: MANDATORY SEPARATION PROCESSING OF E1 AND ABOVE PERSONNEL AFTER ONE DRUG ABUSE OFFENSE.
16. CNO WASHINGTON DC 282024Z FEB 92 (NAVADMIN 025/92); Subj: ZERO TOLERANCE FOR SEXUAL HARASSMENT.
17. CNO WASHINGTON DC 201614Z FEB 87 (NAVOP 013/87), retransmitted by CNO WASHINGTON DC 211428Z JUL 92 (NAVADMIN 105/92); Subj: DELEGATION OF ADMINISTRATIVE SEPARATION AUTHORITY FOR ENLISTED PERSONNEL.
18. SECNAVINST 1850.4C; Subj: DEPARTMENT OF THE NAVY DISABILITY EVALUATION.
19. BUPERS 1001.39B; Subj: ADMINISTRATIVE PROCEDURES FOR NAVAL RESERVISTS ON INACTIVE DUTY.
20. SECNAVINST 5420.174C; Subj: REVIEW AT THE LEVEL OF THE NAVY DEPARTMENT OF DISCHARGES FROM THE NAVAL SERVICE.
21. Title 32, Code of Federal Regulations (National Defense).
22. SECNAVINST 5300.26B; Subj: DEPARTMENT OF THE NAVY POLICY ON SEXUAL HARASSMENT.
23. NAVPERS 156651; Subj: U.S. NAVY REGULATIONS
24. CNO WASHINGTON DC 291936Z APR 93 (NAVADMIN 071/93); Subj: PHYSICAL READINESS PROGRAM CHANGES
25. Office of Government Ethics Regulation, 5 C.F.R.

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- 26. SECNAVINST 5211.5D; Subj: DEPARTMENT OF THE NAVY PRIVACY ACT PROGRAM.
- 27. CNO WASHINGTON DC 2416222 JUN 94 (NAVOP 028/94); Subj: TIMELINES AND REPORTING CRITERIA FOR SEXUAL HARASSMENT CASES
- 28. OPNAVINST 5370.2A; Subj: NAVY FRATERNIZATION POLICY.
- 29. SECNAVINST 5300.30C; Subj: MANAGEMENT OF HUMAN IMMUNODEFICIENCY VIRUS-1 (HIV-1) INFECTION IN THE NAVY AND MARINE CORP.
- 30. DoD REGULATION 5500.7-R; Subj: JOINT ETHICS REGULATION (JER).